

1 **STATE OF WISCONSIN CIRCUIT COURT DODGE COUNTY**
2 **BRANCH III**

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4
5 **STATE OF WISCONSIN,**
6 **Plaintiff,**

7 **-vs-**

Case Nos. 2015-CF-256

8 **JARED L. SPENCER,**
9 **Defendant.**

2015-TR-6278

10
11 **Sentencing Hearing**
12
13

14 **HONORABLE JOSEPH G. SCIASCIA**

15 **Judge Presiding**
16

17 **APPEARANCES:**

18 **ATTORNEY KURT F. KLOMBERG,** District Attorney
19 for Dodge County, on behalf of the State of
20 Wisconsin;

21
22 **ATTORNEY CHARLES W. GIESEN,** on behalf of, and
23 with, Defendant, Jared L. Spencer.
24

25 Date of Proceedings: **July 21, 2017.**

1 THE COURT: Good morning, everyone. We
2 have two cases that will be called
3 simultaneously here; 15-CF-256, State of
4 Wisconsin and Jared Spencer and 15-TR-6278,
5 Dodge County and Jared Spencer.

6 Mr. Spencer is here in person in custody
7 with his attorney, Mr. Giesen. District
8 Attorney Klomberg is here for the State.

9 We have substantial time set aside for
10 this case today, but as always, we do not have
11 unlimited time. I believe a lot of people want
12 to address the Court and I want to hear
13 everything that everyone wants to say.

14 Since the lawyers are trained, I am going
15 to ask them to be as efficient as possible in
16 making their remarks. I'm going to give them
17 all the time they need to make their point.

18 I need some time at the end. So please
19 understand that I am responsible for explaining
20 the discretion that I exercise in sentencing and
21 I am going to need a little bit of time at the
22 end. So hopefully everyone will be satisfied
23 with the input that they have had.

24 We will break for lunch at 11:45 and
25 reconvene at 1:00 unless I hear a violent

1 objection.

2 ATTORNEY KLOMBERG: I don't have a
3 violent objection, Judge, but what I would ask,
4 Mr. Giesen and I had a brief discussion about
5 timing and we have six-and-a-half hours set
6 aside for this. I don't think we are going to
7 need that full amount of time. In fact, I think
8 it's going to be considerably less than that.

9 What I request of the Court is that once
10 my remarks begin, and I expect that they begin
11 in the morning, that I finish my remarks without
12 having them broken. And if we have to break a
13 little early for lunch to start my remarks after
14 lunch or go into the lunch hour a little bit
15 that would be great, but I have prepared remarks
16 and I don't want to be told half way through
17 that I have to stop and pick it up again after
18 lunch.

19 THE COURT: We'll try to accommodate you.
20 We have a lot of people here who want to go
21 someplace for lunch. My idea is to break at
22 quarter to 12:00 so they can beat the rush hour.
23 And we don't have unlimited options here in town
24 for lunch.

25 So I will try to accommodate you. I

1 understand your position, but I don't know, it
2 may or may not be feasible. I'll see what I can
3 do.

4 ATTORNEY GIESEN: Your Honor.

5 THE COURT: You may go. Go ahead,
6 Counsel.

7 ATTORNEY GIESEN: I was just going to say
8 in the interest of saving Courtroom time, I have
9 provided the Court with a number of documents
10 and submissions in advance of today.

11 THE COURT: Right.

12 ATTORNEY GIESEN: And I just wanted to be
13 certain that the Court has had an opportunity to
14 receive and review all of those.

15 THE COURT: I read the two letters that
16 were sent yesterday. And you sent me two
17 letters. Let me just make sure I have them all.

18 I read everything that's been filed at
19 least once up to today, which is part of what I
20 wanted to say here in a minute.

21 I have your letter of July 20th. I have
22 your sentencing report the day of June 26th. I
23 have your letter of July 12th. I had printed
24 off some cases. I have your letter of
25 July 17th. And two letters of July 17th with

1 attachments which included the resources
2 available at the prison system. And then I did
3 get the letters from Mr. Spencer's mother and
4 step grandmother yesterday. I read those. So
5 did I miss anything.

6 ATTORNEY GIESEN: No, that is everything.
7 Thank you, Your Honor, we appreciate the Court
8 reviewing that.

9 THE COURT: You may notice that I have
10 some notes here. There is a substantial body of
11 materials that have been sent and I wanted to be
12 able to access information. So I typed up some
13 notes. I do not have a decision here. So if
14 anybody thinks that I walked in the Courtroom
15 and already had my mind made up, it's not true.
16 Which is why I wanted to emphasize that I do
17 want to make sure everybody gets time to say
18 what they want to say.

19 Do we have a stipulation as to
20 restitution and pretrial incarceration?

21 ATTORNEY KLOMBERG: Restitution the only
22 request is a \$38.98 from Mills Fleet Farm. I
23 don't know if that's agreed to.

24 ATTORNEY GIESEN: They have that. There
25 wasn't a loss.

1 ATTORNEY KLOMBERG: That's the request I
2 have. I do not know.

3 That's the request that I have if there
4 is a dispute, we have a Hearing over \$38.

5 THE COURT: It may be that because this
6 is the box of ammunition, I assume?

7 ATTORNEY KLOMBERG: It is.

8 THE COURT: Maybe because it left the
9 store, they are not allowed to take it back.

10 ATTORNEY GIESEN: If that's the case, we
11 will stipulate to that.

12 THE COURT: Now, are you telling me that
13 there is no restitution claim for any other
14 medical bills or anything like that?

15 ATTORNEY KLOMBERG: I haven't received
16 any. And I have requested that that be checked
17 into. I haven't received any. Obviously, the
18 victims could make a request within 60 days of
19 the sentencing whether the Court could
20 accommodate the Hearing or not is --

21 THE COURT: Well, my preference is to
22 have all those issues addressed at sentencing,
23 but if a request is filed in a timely manner and
24 if the parties can't agree, a Hearing will be
25 scheduled.

1 Pretrial incarceration credit?

2 ATTORNEY KLOMBERG: It's 738.

3 THE COURT: Agreed?

4 ATTORNEY GIESEN: Yes, Your Honor.

5 THE COURT: So Ordered.

6 The next thing on my list, any challenges

7 or corrections to the PSI?

8 ATTORNEY KLOMBERG: The State doesn't

9 have any.

10 ATTORNEY GIESEN: No challenges to the

11 content, per se.

12 THE COURT: You are talking about the

13 facts and I realize that you reserve your right

14 to challenge the recommendation.

15 ATTORNEY GIESEN: Yes. And we don't

16 believe the data supports the recommendation. I

17 will address that.

18 THE COURT: Okay. Now, I would like to

19 get an idea who wants to address the Court and

20 do this in some kind of orderly manner.

21 We have a roster of who wishes to address

22 the Court. Do we have some kind of

23 understanding what order they are going to be

24 testifying in?

25 ATTORNEY KLOMBERG: Judge, my

1 understanding is the only victim that's going to
2 make a statement is Mr. Kruse. He has requested
3 to make his statement from Counsel table. I
4 would ask that Victim Impact Statement, that
5 Victim Impact Statement go after any character
6 witness, fact witness that would be presented on
7 either side. The State is not going to be
8 presenting any fact or character witness.

9 THE COURT: So you want to allow
10 Mr. Spencer to present his supporting witnesses
11 first and then Mr. Kruse? Is it Kruse or Kruse?

12 ATTORNEY KLOMBERG: Kruse.

13 THE COURT: I want to make sure I get it
14 right.

15 Mr. Giesen, who do you wish to call?

16 ATTORNEY GIESEN: Mr. Spencer's father,
17 John; Mr. Spencer's mother, Peggy Andrew; his
18 step sister, Angela; his grandmother is also
19 present, but she doesn't wish to address the
20 Court.

21 There are other family members it seems a
22 little unorthodox that the State doesn't go
23 first.

24 THE COURT: I don't know how much
25 difference it really makes.

1 ATTORNEY GIESEN: Okay.

2 THE COURT: If you think your toes are
3 being stepped on, we'll do it the other way.

4 ATTORNEY KLOMBERG: I'm not asking
5 Counsel to argue first. I just want the fact
6 witnesses to be done first.

7 THE COURT: We're talking about the lay
8 people.

9 ATTORNEY KLOMBERG: I would certainly put
10 my mine on first, if I had any.

11 THE COURT: Okay. So you have the
12 victim.

13 ATTORNEY KLOMBERG: But the victim is not
14 going to be sworn. He doesn't need to be sworn,
15 he is not subject to examination.

16 THE COURT: I am not sure that any of
17 them need to be sworn.

18 ATTORNEY GIESEN: Correct.

19 THE COURT: So is it John Spencer and his
20 mom, Ms. Andrew, right?

21 ATTORNEY GIESEN: Correct.

22 THE COURT: And the stepsister.

23 ATTORNEY GIESEN: Yes.

24 THE COURT: And as far as you know, are
25 there any others?

1 ATTORNEY GIESEN: No, Your Honor.

2 THE COURT: So is there anything else we
3 need to address before we allow the lay people
4 to come in and make their statement?

5 ATTORNEY KLOMBERG: I don't think so,
6 Judge.

7 ATTORNEY GIESEN: Just following up on
8 the Court's comments, I assume these will just
9 be statements to the Court and not testimony or
10 Cross-Examination?

11 THE COURT: It's done different ways.
12 They are not witnesses, they are not on trial,
13 it would be fair to allow both sides to ask them
14 some questions, right, if they wanted to.
15 That's commonly done.

16 ATTORNEY KLOMBERG: I guess my thought
17 is, my practice in other Courts practices have
18 always been that when they are being put on for
19 character reasons, they're testifying providing
20 evidence to the Court and that should be sworn
21 testimony subject to Cross-Examination.

22 I don't know that I am going to
23 Cross-Examine them, but --

24 THE COURT: Well, it can be done either
25 way. If there is a request that they be sworn

they will take the witness oath. It's fair. If you offer something, it's got to be reliable. And the Court and the parties are entitled to know that they are doing it under oath.

ATTORNEY GIESEN: Thank you.

THE COURT: So do we have an understanding as to who wants to be called first or who wants to present their statement first?

ATTORNEY KLOMBERG: While Mr. Giesen is working that out, can we get the computer going? It takes a very long time to load because of the software.

THE COURT: Okay.

ATTORNEY KLOMBERG: If they want to commence.

THE COURT: Do you have somebody that you would like to call first?

ATTORNEY GIESEN: Yes. We would ask John Spencer.

THE COURT: Mr. Spencer.

THE WITNESS: Yes, sir.

THE COURT: Please come up to the witness stand and raise your right hand.

(Witness sworn.)

1 JOHN SPENCER,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified as
4 follows:

5 EXAMINATION

6 BY THE COURT:

7 Q. Please have a seat.

8 Mr. Spencer, you have a chance to make a
9 statement to the Court. Take a deep breath and
10 relax.

11 Please be aware of the fact that the
12 microphone is movable and that if you don't
13 speak really close to it, it won't pick up.
14 Okay?

15 A. Okay.

16 Q. The lawyers will have a chance to ask you
17 some questions when you are finished and I might
18 have some. Okay?

19 A. Okay.

20 Q. Start by stating your name and address.

21 A. My name is John Spencer. My address is
22 2990 Austin Street, Fitchburg, Wisconsin.

23 Q. And you are Jared's father?

24 A. Yes, I am.

25 Q. You now have an opportunity to address

1 the Court with regard to sentencing. You have
2 the floor.

3 A. Your Honor, all I would like to speak to
4 is Jared now versus Jared two years ago when I
5 visited him the first time at this facility.

6 Today he is coherent, he puts together
7 excellent thoughts. That first time, Jared
8 wasn't there. I didn't hardly recognize him. I
9 think that the work that Mendota put in in
10 stabilizing his medication and stabilizing him
11 has shown brightly over the last three or
12 four months since he has been back here.

13 I can't tell Mr. Kruse how sorry I am
14 about what happened. My family is -- feels
15 terrible about it, but we can't change the past.
16 We can only look to make the future better.

17 I don't believe the type of sentence that
18 the DA is asking for benefits anyone; not
19 society, not Jared, not our family. And I don't
20 believe the victim's family benefits from it.

21 Jared needs treatment. Jared needs to be
22 in therapy working on maturing. Those are the
23 things that I want to bring to light here.

24 Q. Anything else you want to say?

25 A. No, sir.

1 THE COURT: Mr. Giesen, do you have any
2 questions for this gentleman?

3 ATTORNEY GIESEN: Yes.

4 EXAMINATION

5 BY ATTORNEY GIESEN:

6 Q. John, you have been here for Jared for
7 every Court appearance, is that correct?

8 A. Every Court appearance and once a week
9 for the last two years on a Thursday to visit.

10 Q. If the Court were to see fit to place
11 Jared on Probation with whatever rigorous
12 conditions it felt appropriate, would you assist
13 in seeing to it that those conditions were
14 complied with?

15 A. In any way I could, yes.

16 Q. If he deviated from any conditions, would
17 you take it upon yourself to advise his
18 supervising agent of any such problem?

19 A. Yes, I would.

20 ATTORNEY GIESEN: Thank you. I have
21 nothing further.

22 ATTORNEY KLOMBERG: I don't have any
23 questions.

24 THE COURT: Thank you, sir. Your input
25 is very important to the Court. You may step

1 down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 (Witness excused.)

5 THE COURT: Mr. Giesen?

6 ATTORNEY GIESEN: Yes, we would call
7 Angela Spencer and ask that she address the
8 Court.

9 THE COURT: Good morning. Please come up
10 to the witness stand and raise your right hand.

11 (Witness sworn.)

12 EXAMINATION

13 BY THE COURT:

14 Q. Please have a seat. Please feel free to
15 adjust the microphone and to speak directly into
16 it. Take a deep breath and relax. This is your
17 opportunity to address the Court. When you are
18 finished, the lawyers and I might have some
19 questions for you. Okay.

20 You can start by stating your name and
21 address for the record.

22 A. Okay. My name is Angela Spencer. My
23 address is 5714 Crab Apple Lane, Madison,
24 Wisconsin 53711.

25 Q. How are you related to Jared?

1 A. I am Jared's only sister. We have the
2 same father. Jared and I are five years apart,
3 but we have a very close relationship. When I
4 need something, I can call him and he is always
5 there for me. When I am sick, he brings me soup
6 and a heating pad and tucks me in. He calls and
7 checks on me. We talk about anything and
8 everything.

9 I have two daughters, they are 13 and
10 nine. My nine-year-old has ADHD like Jared
11 does. Jared has been so helpful in helping me
12 navigate the situation of having a daughter with
13 emotional and behavioral problems. He talked to
14 me about how important it is to get her help and
15 to get her medicine and talk to me about the
16 differences that he would feel growing up in
17 school of when he was medicated versus when he
18 wasn't.

19 He has more patience with my youngest
20 daughter than I have ever seen anyone have. And
21 she worships him. And they miss him so much.

22 When Jared was in elementary school I
23 recall an incident where he had locked himself
24 in the principal's office and called me and
25 asked me to come pick him up because the

1 teachers had surrounded him and he was scared.

2 Q. Say that again, please. The teacher
3 what?

4 A. Because they had -- he was having a
5 behavioral issue and they have a response team
6 that comes. And they all approached him and he
7 was scared. So he ran into the room, locked the
8 door and called me and asked me to please come
9 save him from that situation. I wish that I
10 could save him from this situation.

11 When Jared takes his medicine, his anxiety and
12 impulsivity are drastically improved. Jared was
13 young, just 17 when this happened. His brain
14 was not fully developed when this incident took
15 place.

16 I'm so sorry to the victim and his family and
17 I truly hope that the victim is able to fully
18 heal, recover from this and go on to have a
19 healthy and happy life.

20 I also hope that Your Honor will consider the
21 circumstances and understand that Jared is very
22 young and he needs help. Please give him the
23 punishment that will allow him to be
24 rehabilitated and not thrown away with no hope
25 for a future. I know he can become a

1 productive, healthy and contributing member of
2 society because he is just a sweetheart. He
3 really is if you knew him. And this is not
4 indicative of the -- the incident is not
5 indicative of the person he truly is.

6 Not to say he doesn't take responsibility,
7 because he does, but I think there was a lot of
8 additional circumstances. But I just really
9 want my brother to be able to be punished and
10 rehabilitated and move on and contribute and
11 continue to be the brother I can count on and
12 the uncle that my girls can count on.

13 Thank you.

14 THE COURT: Attorney Giesen.

15 ATTORNEY GIESEN: I have no questions.

16 THE COURT: Attorney Klomberg?

17 ATTORNEY KLOMBERG: No questions.

18 THE COURT: Thank you, ma'am. Your input
19 is very important. You may step down.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 ATTORNEY GIESEN: Jared's mother, Becky
23 Andrew would like to address the Court.

24 (Witness sworn.)

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EXAMINATION

BY THE COURT:

Q. Please have a seat. Good morning, ma'am.

A. Good morning.

Q. You heard the suggestions I gave to the other witnesses to try to relax, use the microphone.

This is your chance to make a statement. So you can start by stating your name and address for the record.

A. My name is Peggy Andrew, 2306 Westchester Road, Fitchburg, Wisconsin.

Q. Okay. You now have the floor. You may proceed.

A. The day after this happened, my family and Jared's friends all gathered at my house. And everyone said that it had to have been someone else in the car because Jared would never hurt a fly. And they were stunned. Those kids gathered around me for months.

Jared has always been my rock and my support. And I have been his. I foster Greyhounds and take animals into my home to heal them. Jared has always helped me with that. And he has been kind and gentle and patient with

1 all of the Greyhounds and special animals that
2 we have had in our home.

3 I also, uhm, have always had my home open
4 to any of the kids or people that needed a soft
5 place to land for a while. Not just animals,
6 but people that need some time to get back on
7 their feet. And Jared has always been there for
8 me with that and been kind and supportive of the
9 people that have come through our house.

10 It always hasn't been easy, but he has
11 always been up to the task of helping. I really
12 need him home, on his medication and in therapy.

13 I think this has been a tough chapter in
14 his life, but it's not the end of his book. And
15 I'm -- I spoke to one of the CO's yesterday when
16 I came to pick up some of Jared's property and
17 she remarked to me what a drastic difference
18 there was between the Jared that came to them
19 two years ago and who he is now and the maturity
20 and growth that they have seen.

21 This has been very difficult for my
22 family. And we all will stand beside Jared to
23 help him become a productive part of our
24 society. I think putting him away somewhere
25 will -- make his ability to be productive go

1 actually backwards. Because I worked really
2 hard and his father and I have worked really
3 hard together to try and raise Jared. Even
4 though we weren't together anymore, we stood
5 together along with our new spouses and our new
6 families together. Because it was about him not
7 about us. And he still needed all of us. And
8 he still has all of us.

9 THE COURT: Anything else you want to
10 say?

11 Attorney Giesen.

12 ATTORNEY GIESEN: Yes. Thank you.

13 EXAMINATION

14 BY ATTORNEY GIESEN:

15 Q. Ms. Andrew, you mentioned a conversation
16 that you had with a CO regarding Jared's change
17 in behavior in the two years since he has been
18 here. Can you tell us what is a CO?

19 A. The corrections officer.

20 Q. That would be a Dodge County jailer?

21 A. Yes, I was there yesterday and I was -- I
22 send Jared a lot of books because he likes to
23 read. And so when I pick up his books, it's
24 usually, uhm, very weighty and so they bring it
25 out in a cart for me and help me load it in the

1 car.

2 Q. And she expressed those observations?

3 A. Absolutely.

4 Q. Thank you.

5 ATTORNEY GIESEN: I have nothing else.

6 THE COURT: Attorney Klomberg.

7 ATTORNEY KLOMBERG: Nothing.

8 THE COURT: You can step down, ma'am.

9 Thank you for your statement.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Anyone else?

13 ATTORNEY GIESEN: No, Your Honor. We

14 would have submitted some written statements in

15 support of Jared. And at this point the

16 Court -- Richard Shaller who worked for the

17 Department of Corrections was an Officer for 28

18 years. And he noted that Jared's behavior

19 exhibited dramatic improvement while he was at

20 Mendota Mental Health and feels that he would

21 benefit from the a comprehensive treatment

22 program certainly would be more rehabilitative

23 and useful than incarceration and the Court has

24 already read the other submissions in that

25 regard.

1 THE COURT: Okay. So that would leave
2 Mr. Kruse.

3 ATTORNEY KLOMBERG: Actually, Judge. I
4 was handed a note during the presentation.
5 Bryce Berger, another one of the victims is
6 present and he also has decided he would like to
7 make a statement.

8 Mr. Kruse is going to go first, I
9 believe.

10 THE COURT: Come up to the -- you can do
11 it there. You have to take the oath.

12 (Witness sworn.)

13 EXAMINATION

14 BY THE COURT:

15 Q. Mr. Kruse, please have a seat. Draw the
16 mic up, take a deep breath and relax.

17 Start by stating your name and address
18 for the record.

19 A. My name is Andrew Kruse. My address is
20 W-210 N-16682 Western Avenue, Jackson,
21 Wisconsin.

22 Q. And you now have the opportunity to
23 address the Court. You have the floor.

24 A. Thank you, Your Honor.

25 Uhm, I have a statement written and I'll

1 refer to that and read that, but I do have a few
2 thoughts, if I may, before I do that.

3 Uhm, I have thought about quite a bit
4 lately what I would prefer to happen today.
5 Those who know about the situation know us and
6 care about our outcomes, they ask what I would
7 hope would happen today. And I have a very good
8 answer, Your Honor. Uhm, I'm glad you are
9 making that decision and not me. Because quite
10 frankly, to be blunt, what I want is impossible.
11 And I know that.

12 Of course, I would like for this to not
13 have happened. And I'm sure many others in the
14 Courtroom feel the same way, but that isn't
15 possible. So I think this is a great
16 opportunity for me to say something that my
17 parents taught me, I have taught my children and
18 that's that the Good Lord, he teaches us to
19 forgive. And that is exactly what we do as
20 Christians. I want my children to hear that
21 message today.

22 And, of course, along with that, the
23 consequence of the actions of Jared's actions.
24 I think the most important thing that you can
25 hear and this Court could hear are, of course,

1 in relation to that, the impacts that this has
2 had on me and, of course, my family, most
3 specifically my wife and my children as referred
4 to in my statement.

5 So regarding Jared's decision to shoot
6 me, there was indeed life before the shooting
7 and now there is life after. They are very
8 different. Though my life is irreversibly
9 changed as a result of Jared's decision to shoot
10 me, I am grateful, of course, to still have it.

11 It's difficult to fully express the full
12 impact that this event has had on my life and
13 the lives of my wife and children because it is,
14 of course, far reaching and unfortunately still
15 developing.

16 I'm still dealing and wrestling with the
17 daily psychological changes that have come as a
18 result. And those psychological changes have
19 continued to impact my family in a manner of
20 ways.

21 In the days following the shooting, I
22 experienced tremendous physical pain. It was
23 poorly regulated for the first eight weeks until
24 the doctors were able to find the right amount
25 of medication for nerve pain. This caused many

1 sleepless nights counting the minutes until the
2 next dose of medication.

3 And made further sleepless as our
4 children began to suffer from nightmares of bad
5 men with guns. They were scared to come today,
6 as a matter of fact. These nightmares continued
7 for over a year. All three of my children have
8 struggled to understand why someone would do
9 this. And they ask us about their own safety
10 when we drive anywhere, large cities.

11 After this happened, they learned we were
12 moving closer to Milwaukee. Their classmates
13 told them Milwaukee is where shootings happen
14 and that, of course, further upset them.

15 Ultimately, in regards to my children the
16 phrase my dad got shot or the news about this
17 event is the first thing that they share with
18 anyone they meet.

19 My wife has been remarkable. She
20 certainly cared for us physically and
21 psychologically through all of this. I'm
22 grateful and humbled by her ability to do that.

23 While experiencing her own levels of
24 anxiety in the aftermath of the shooting, which
25 she hasn't benefitted from treatment as I have.

1 She drove me to seemingly countless
2 appointments, dressed my wounds and helped me
3 during panic attacks and moments of crisis while
4 simultaneously managing our home and our daily
5 lives and making sure we were all fed and
6 unquestionably loved. All done through selfless
7 effort. And the impact on her has been
8 tremendous.

9 So, I mentioned psychological impacts.
10 I'll speak to those. My first panic attack
11 occurred almost exactly four weeks after the
12 shooting. And it was as if that first panic
13 attack opened the flood gate.

14 I had experienced some flashbacks and
15 sensitivity to things like loud noises after the
16 shooting, but all of that would pale in
17 comparison to the diagnosis that I received for
18 PTSD.

19 My arm hurt for a long time. It took
20 almost a year for me to stop taking medication
21 to get through my day regarding physical pain.
22 I still have numbness, stiffness, a loss of
23 strength in my dominant hand and my arm and my
24 shoulder, but what I have experienced
25 psychologically has been far more life changing.

1 It was clear that my life would be
2 changed as a result of being shot by Jared, but
3 the future of my job was in question at that
4 time. I had very serious injuries, but I truly
5 had no idea how much my life would change due to
6 the psychological impacts as a result of the
7 shooting.

8 So what I experience today is fear of
9 many things that really truly pose no threat.
10 I'm hypervigilant in crowded areas like
11 departments stores, parking lots and
12 unfortunately church. I struggle most in a room
13 with people around me.

14 A lot of noises like thunder, fireworks
15 and slamming car doors cause flashbacks and
16 anxiety. And I am hyper-attuned to my personal
17 well-being. A slight inconvenience can cause a
18 panic and heightened sensitivity. Anything that
19 alters my personal state, even a cup of coffee
20 causes me to feel very anxious about my health.

21 Essentially, I feel like the world's
22 biggest hypochondriac. I'm constantly worried
23 about the pace and control of my breathing.
24 Most likely because the ability to control my
25 breathing is sort of my greatest defense against

1 a lot of the symptoms that I experience.

2 I still experience nightmares of being
3 shot, reliving the sensation. I have difficulty
4 sleeping most nights, several nights a week.
5 And I spend a lot of time in the middle of the
6 night getting up and checking to see whether or
7 not the doors are locked for fear of something
8 like this or something bad happening to us
9 again.

10 Whenever I head out to the store or work
11 or home, I'm constantly assessing my
12 surroundings and creating plans in my head or
13 what I will do if gunshots ring out again or
14 something bad starts happening to myself or my
15 family.

16 There are some other PTSD symptoms that
17 are extremely frustrating unrelated to panic and
18 anxiety that I do experience. The best words I
19 found to define that are mental fog. Whether I
20 am at work or at home, I have a hard time
21 finding the words to speak clearly when I am not
22 reading a written statement, of course. And
23 it's difficult to come up with new ideas and I
24 need to take frequent breaks when I need to
25 focus.

1 The hard truth, the hard truth in my life
2 in all this is my right arm won't ever be the
3 same. And neither will my head. The
4 psychological impact of the shooting extended
5 into my personal relationship and made it
6 difficult for me to be fully mentally present
7 with my family, friends and colleagues.

8 And finally, I live with fear and will be
9 ever vigilant over the threat of something like
10 this happening again.

11 In regards to today's outcome, again, I
12 know that regardless of any circumstances or
13 detail, I'm fearful of Jared Spencer's return to
14 society. I fully expect that day to come. And
15 intellectually I fully understand that it must,
16 but I share the reality of my situation and
17 condition when I say that I am profoundly
18 frightened by it.

19 There is no question that this has
20 permanently changed my life and the life of my
21 family. I'm thankful to God that we are still
22 all together. We trust God's judgment and will
23 for us and we know that this is part of his will
24 and we pray for the strength to continue and he
25 continues to grant it. That's all I have.

1 THE COURT: Thank you, sir.

2 Mr. Giesen.

3 ATTORNEY GIESEN: Yes, I would like to
4 express to Mr. Kruse that Jared has asked me to
5 express to you that he bears no personal
6 animosity towards you, whatsoever. He is deeply
7 sorrowful for your situation and wanted me to
8 tell you that he regrets the consequences, the
9 results. He had no intent to harm you on the
10 day and thinks every day about the suffering
11 that you are going through.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Klomberg.

14 ATTORNEY KLOMBERG: No questions.

15 THE COURT: Thank you, sir.

16 (Witness excused.)

17 ATTORNEY KLOMBERG: Mr. Berger would like
18 to make a statement.

19 Your Honor, Mr. Berger has asked not to
20 give out his address. I ask that you identify
21 him in a different fashion.

22 THE COURT: Good morning, sir. Please
23 feel free to adjust the microphone. You have to
24 stand up and raise your right hand and take the
25 oath, please.

1 (Witness sworn.)

2 BRYCE A. BERGER,
3 called as a witness herein, having been first
4 duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. Now, Mr. Berger, if you don't want to
9 give out your address, can you tell us what city
10 you live in?

11 A. Yes, that's fine.

12 Q. Okay. So would you please state your
13 name and city of residence for the record.

14 A. Bryce Berger and Rio, Wisconsin.

15 Q. You now have an opportunity to address
16 the Court you may proceed.

17 A. First of all, I want to express my
18 sympathy to the Spencer family. I understand to
19 a certain extent what you guys are going
20 through. You may or may not know in my
21 profession I'm a police officer. With that
22 being said, I have kind of seen both sides of
23 what's transpiring today.

24 And one thing that I did notice that I
25 want to bring to the Court's attention and to

1 everybody in here, there are many, many, many
2 victims in this incident. Not only myself, not
3 only Mr. Kruse, Kruse's children, Kruse's
4 family.

5 Every single person with Mr. Spencer's
6 actions that day started a chain of events. The
7 officers that had to initiate a traffic stop
8 knowing that there was a loaded handgun in that
9 car put everybody at risk; their families, every
10 person in the parking lot when that shot was
11 fired. The victim, the store itself.

12 I just want to make sure that everybody
13 knows that I heard a lot of comments today just
14 regarding to the specific individual that was
15 shot. Okay. Those actions are unexplainable.

16 The fact that he wasn't on his medication
17 and I get that, I see a lot of that in my
18 profession, not properly medicated, not taking
19 them, but whose responsibility is that?

20 He is 17. Are there family members that
21 are going to assist with that? One way that I
22 believe that that would be easily monitored
23 would be to be incarcerated. For how long, I
24 have no idea. That's not my decision to make.

25 But someone made a decision that day to

1 put a loaded handgun in the middle of the front
2 two seats. Someone made a decision that day to
3 go get or go steal ammunition from a store in
4 Beaver Dam, Wisconsin that fits the handgun that
5 was in the center console.

6 What was going to happen? What did we
7 possibly prevent from happening later on that
8 day? And one thing that I really struggled with
9 personally is that I made the decision coming
10 here, that I probably wasn't going to speak and
11 just let things play its course, but I didn't
12 want to regret the opportunity to make the
13 situation of giving everybody my thoughts and
14 everybody thinking outside of the box, because
15 we are here focusing on everything. And I think
16 everything needs to be brought up.

17 And I'm probably going to forget some
18 things, but I don't have nothing laid out in
19 front of me that I was going to say. I do know
20 that in the future, that I wish we could just
21 skip over July. I have a lot of bad things,
22 tragedies in July. Several dates in July are
23 not good for me. The passing of my father last
24 week.

25 Another thing that I told myself

1 before -- as soon as getting back on scene, I am
2 a law enforcement officer, I made a decision
3 that I was not going to carry off duty. I don't
4 even carry a badge, ID, nothing. And I kind of
5 went through there is a lot of issues with
6 thinking in my mind that in the situation as
7 such happened with Mr. Kruse, if I would be able
8 to live with it.

9 And I know for a fact that if I was
10 carrying that day off duty, the outcome may have
11 been different. And I personally believe the
12 only reason why Mr. Spencer did not shoot the
13 first time when he pulled the gun when I was two
14 feet away from the window of his car is because
15 of the glass that separated us in between and he
16 didn't know what was going to happen.

17 At that point in time, if I would have
18 been carrying off duty, I don't know. I'm glad
19 within reason that no one was killed. The
20 situation ended as well as it could have, I
21 guess, if he would have missed. But when you
22 back out of a parking stall, have an out in a
23 vehicle, pull forward, stop, roll down the
24 passenger side window, point the gun at three
25 people that are standing side by side trying to

1 call 911. And hopefully no one ever has a
2 bullet go right past my chest into Mr. Kruse's
3 wrist through and through into his shoulder
4 because if that would have hit me, it would have
5 been through and through from shoulder to
6 shoulder right through my chest cavity.

7 And then, yes, I'm trained to remember
8 license plates, description of the gun,
9 direction of travel and stuff like that in
10 relaying that to an individual who is going into
11 shock, because I'm kneeling over him putting
12 pressure on his wound, my hand covered in blood
13 and I am not bringing up any suggestions here,
14 but bare hand exposed to blood numerous
15 infectious, diseases, okay. And I feel
16 confident that I am okay with that. Okay, but
17 these are some other things that people don't
18 think of.

19 I guarantee Mr. Spencer didn't think of
20 that going to Fleet Farm, I'm just going to
21 steal this stuff and then, you know, whatever is
22 going to happen. Every single person coming
23 there responding. Everybody was put at risk.
24 The behavior of Mr. Spencer leaving the parking
25 lot at such a high rate of speed. There is a

1 lot of victims here.

2 And I want to personally apologize to
3 Mr. Kruse and his family for what you guys are
4 going through. And I'm struggling with it
5 basically daily that I could have possibly
6 stopped it if I would have carried off duty.

7 You still have your job. You still
8 probably will be able to go into a Fleet Farm.
9 And for the kids. And your whole family. And I
10 am sorry to the Spencer family for what
11 happened.

12 I just want him to get the proper
13 treatment and I think the proper treatment would
14 be in a more monitored location which I believe
15 would be incarceration, not home treatment. I
16 understand people promised they will see and
17 report stuff if he is on Probation, I firsthand
18 witnessed that it doesn't work so well in Law
19 Enforcement. There are a lot of things that
20 happen that can't be monitored at home or, you
21 know, even a group home and stuff like that.
22 It's really tough.

23 I guess that's it, Your Honor.

24 THE COURT: Thank you, sir.

25 Mr. Giesen.

1 ATTORNEY GIESEN: Thank you.

2 EXAMINATION

3 BY ATTORNEY GIESEN:

4 Q. Mr. Berger, thank you for your remarks.
5 I would just like to clarify one thing. You
6 made reference to the officers who pulled
7 Jared's vehicle over after this incident.

8 Jared did surrender peacefully, did he
9 not?

10 A. I wasn't there, but the whole idea being
11 a Law Enforcement Officer it isn't. Nothing is
12 peaceful about having a gun in a vehicle going
13 down the road who did not stay.

14 Q. Sir, you have no information that he
15 brandished the weapon, showed that to the
16 officers or resisted them in fashion, do you?

17 A. I am just making a point that a gun in a
18 car leaving the scene of a shooting is not a
19 very easy, calming situation for anybody to deal
20 with. That was my point.

21 ATTORNEY GIESEN: Thank you.

22 THE COURT: Attorney Klomberg?

23 ATTORNEY KLOMBERG: Nothing.

24 THE COURT: Thank you, sir. Your input
25 is very much appreciated by the Court.

1 (Witness excused.)

2 THE COURT: Mr. Klomberg, can you get it
3 done or what do you think?

4 ATTORNEY KLOMBERG: Well, Judge, I expect
5 my remarks will probably very well may be an
6 hour in length. I think we can be done before
7 noon.

8 THE COURT: Start now.

9 ATTORNEY KLOMBERG: Judge, first I want
10 to deal with the second charge or the second
11 conviction that the Court is sentencing on
12 today. Because it's really not the focus of
13 what we are dealing with in the TR situation.

14 In 15-TR-6278, we are recommending \$150
15 fine plus costs, six months suspension of
16 license, AODA, Victim Impact Panel and whatever
17 blood draw fee from the hospital that was
18 involved. I'm not going to say anything more
19 about that. That is the what the Court has to
20 sentence on that.

21 THE COURT: Mr. Giesen, can we take these
22 a little bit out of order? Is there a dispute
23 about what the penalty should be on that case?

24 ATTORNEY GIESEN: No, there is not,
25 Your Honor.

1 THE CLERK: I have to have a blood draw
2 fee.

3 ATTORNEY KLOMBERG: I have to look back
4 and see what hospital he was taken to. I can
5 get that.

6 THE COURT: Did we miss any components
7 for that?

8 ATTORNEY KLOMBERG: No.

9 THE COURT: We do not want any
10 ambiguities in the record.

11 Okay. Mr. Klomberg, you have the floor.

12 ATTORNEY KLOMBERG: Well, Judge, I
13 learned a lot of things in prosecuting this case
14 about the facts as I looked through it.

15 And I guess we can start with information
16 that maybe the Court only learned in preparation
17 for sentencing. The firearm involved here was
18 purchased illegally on the street.

19 And the Defendant did that apparently
20 after he had a drug deal that went bad. He had
21 a gun held to his head and somebody shot at him.

22 He also references this burglary to his
23 home, but the gun wasn't in the home to protect
24 the home. He bought this gun because of the
25 drug deal that went bad and the burglary was an

1 afterthought to throw in here and make it sound
2 a little bit better.

3 This was an illegally purchased firearm
4 by a 17-year-old who is not even allowed to
5 purchase a handgun locally in a store. And he
6 bought it on the street for a few hundred
7 dollars.

8 I think we start there. And then that
9 day he took that gun loaded and decided he
10 needed to carry that in his car. He was going
11 to the range to go shooting, so I can understand
12 that, perhaps, he wants the gun to go shooting,
13 but he is a 17-year-old individual. He can't
14 have a concealed carry permit. You go to the
15 range and you transport firearms that aren't
16 properly licensed to carry a weapon, they go in
17 the trunk, they are cased, they are unloaded.

18 That's not what we have here. We have an
19 individual who is rolling around, I posit as a
20 matter of course in his life, armed at 17 years
21 old because he was involved in a drug deal that
22 went bad. Amoral, illegal conduct. That's
23 where we start.

24 So then the Defendant went to Fleet Farm
25 high on drugs and decided to steal ammunition,

1 which ammunition I don't think you can even
2 purchase there. Handgun ammunition most
3 retailers won't sell it to people under the age
4 of 21. So he couldn't get it out unless he
5 stole it. He stole that ammunition.

6 And he gets caught. He is contacted by
7 three individuals. Mr. Berger is off duty. He
8 is actually there shopping for himself and
9 notices that the shoplifting is going on.

10 Ms. Kunkel is a loss-prevention agent.
11 She also is aware that this is going on. And in
12 my view of this, they kind of came to the
13 understanding that the shoplifting was occurring
14 independently of each other, but then there was
15 some communication between them.

16 And Ms. Kunkel follows the Defendant out
17 into the parking lot and Mr. Kruse, the manager,
18 goes out, as well. And eventually Mr. Berger
19 comes out to see if he can assist in the
20 situation.

21 And all they are doing is trying to
22 convince him that he needs to stay. Ms. Kunkel
23 was in between him and the direction that he was
24 traveling and Mr. Kruse told her to get out of
25 his way. This isn't our policy. We don't hold

1 people. She never puts her hands on him.

2 The most aggressive thing she did was
3 stand between him and his car and he was walking
4 out and then they just followed him. They
5 followed him and he gets in his car and he locks
6 himself in his car. But on the way walking
7 there, Mr. Kruse has now entered the incident.
8 And he says to Mr. Kruse, stop following me,
9 that's how people get their ass beat. Quote,
10 that's how people get their ass beat, unquote.
11 So he is threatening already right then and
12 there.

13 Frankly, there is a crime committed
14 beyond the retail theft of witness intimidation.
15 Andrew informed him that they were going to get
16 his plate and report him to the police. That's
17 all. Go to your car, we are just going to get
18 your license plate. Stay here and wait for the
19 police to come, we caught you.

20 We're talking about \$38 worth of ammo. A
21 \$38 item. Retail theft, no criminal record,
22 it's an ordinance. It's an ordinance.

23 He gets in the car, he locks his doors.
24 They are trying to convince him not to leave.
25 You will see in a moment when I play the video

1 they all back away.

2 I know Your Honor is familiar with Fleet
3 Farm in Beaver Dam. There is that main entrance
4 pathway for cars that come in off the main
5 street there, Spring Street. And as you go
6 towards the parking lot towards the building,
7 there is a large sidewalk curb that divides that
8 main thoroughfare from the various parking
9 stalls that are outside. People walk along that
10 curb. You park perpendicular to that main
11 thoroughfare on the other side of that curb.

12 And that's where the Defendant is parked,
13 on the north side of that main thoroughfare.
14 And the three individuals back up and they get
15 up on that curb. They are not even in the
16 parking lot at that point. They are up on the
17 curb. They are not in a parking stall area.

18 And Andrew calls 911. As the Defendant
19 backs his car out of the parking stall, he draws
20 his gun, he points it at Bryce and like Bryce
21 said, the window was up. Did he shoot him out
22 of the driver's side window? I think Bryce's
23 inference as to why he didn't pull the trigger
24 at that point is probably a good one.

25 And he backs up the car, and you will see

1 this on the video. And at this point Andrew is
2 on with 911 and he stops the car and shoots out
3 the passenger window and hits Andrew in the
4 wrist. It goes through his wrist into his
5 shoulder. The bullet lodges.

6 THE COURT: Shoots out the passenger side
7 window?

8 ATTORNEY KLOMBERG: The passenger side
9 window.

10 And then drives away at a high rate of
11 speed. And I want to show the Court that. Can
12 I please have the video?

13 I will need the screen, Judge. Yes, sir.
14 For the record, what I am going to play for the
15 Court is Exhibit 1.

16 THE COURT: Any objection to Exhibit 1,
17 Counsel?

18 ATTORNEY GIESEN: No, Your Honor.

19 THE COURT: One received.

20 (Whereupon, Exhibit Number
21 1 was received into
22 evidence as of July 21, 2017.)

23 ATTORNEY KLOMBERG: So what we are seeing
24 here and the time stamp is pretty accurate. And
25 so at 5:24 and 41 seconds p.m. And what you are

1 looking at is south to north across the Fleet
2 Farm parking lot.

3 To the right of the screen you can see
4 the white box portion of the building. That's
5 where the main entrance is.

6 And as I play this forward -- I am just
7 going to play it forward here.

8 And some people have emerged from the
9 front. Right here where my cursor is pointed is
10 the Defendant and Ms. Kunkel. Ms. Kunkel is at
11 this point, I believe, behind him. And we'll
12 watch as we go forward.

13 The person that just emerged in the white
14 shirt, that should be Mr. Kruse. It's very
15 difficult to see because of the resolution, but
16 as videos go, theirs is a pretty good video
17 system.

18 You can see here at this 5:25:22
19 Ms. Kunkel and Mr. Kruse are between the
20 Defendant and the building on the opposite side
21 of his vehicle from him and they appear to all
22 be just kind of there standing talking. And
23 there is clear separation between all of their
24 persons. What you can see here is another
25 person that has emerged from the store is

1 walking in the direction that they are. That's
2 Bryce.

3 And just to recap here, we are at
4 5:26:46. Over the last period that I played,
5 you actually could see at one point they all
6 start to walk back towards the Fleet Farm
7 building and then the Defendant turns and starts
8 walking back towards his car. They are over in
9 this area where I am pointing and that's where
10 the Defendant's car is located and Bryce is
11 approaching their location.

12 I will pause it right there at 5:27:22.
13 You can see that three individuals have now --
14 they are up on the curb. And move this forward
15 and that car that just emerged was the
16 Defendant's car.

17 I'm going to back this up. Backing up to
18 5:27:21, I am going to play this forward by
19 steps. There is the Defendant's car that just
20 emerges from behind the other vehicle that's
21 parked there.

22 At this point the shooting has actually
23 already occurred. And you can see Andrew start
24 to fall at that point. I can back it up here at
25 5:27:21.

1 THE COURT: Go back a little bit. I want
2 to see the car in a parked position if it's
3 visible.

4 ATTORNEY KLOMBERG: It's not from this
5 angle. I will show the Court another angle in a
6 moment.

7 So I will step this forward just to the
8 point where the car begins to emerge at 5:27:22
9 behind the other object. And if you will watch
10 the person in the trio in the middle, that's
11 Andrew. And you can see the moment that he
12 begins to drop. And there he goes down at
13 5:27:24. And the Defendant is driving away.

14 Now I'm going to switch angles here. And
15 before I do that, I'm going to play this
16 forward. You can see the Defendant's car comes
17 out. He is obscured by the building and then
18 there he goes out the parking lot at a high rate
19 of speed toward Spring Street behind the gas
20 station portion of the business.

21 Now I'm going to switch to the other
22 angle in the parking lot. Okay. Now this is
23 the opposite end of the building north looking
24 south. And I am going to back it up --
25 actually, I have to go forward because we

1 recessed the video when we changed angles.

2 Okay.

3 And I have started it again here at about
4 5:26:13 and right in this area here you can see
5 the individuals talking and this is where they
6 actually start to go back towards the building.
7 And then the Defendant decides that he's going
8 to go for his car. You can see Bryce come
9 around, the three victims move up onto the curb.

10 At this point, they are out of sight, but
11 this vehicle right here is the Defendant's
12 vehicle. And I'm starting again at 5:27:15. He
13 starts to back out, stops and drives. What you
14 can see at this point is he has pointed the gun
15 at Bryce and we step this forward, he backs out
16 and he has a clear path. Nobody is blocking his
17 way. You saw the car drive out of the parking
18 lot. He is in a vehicle, they are on foot.

19 Nobody has threatened him with a weapon. He is
20 just free going. The only thing that's going on
21 is Andrew is calling 911. He told him he was
22 going to do that. And at this point he is shot.

23 THE COURT: Do you need the screen in the
24 next few minutes?

25 ATTORNEY GIESEN: No.

1 ATTORNEY KLOMBERG: So the video clearly
2 shows he is not threatened. They are just
3 walking with him and at one point he actually
4 starts to walk back towards the building with
5 them, but decides he doesn't want to face the
6 music for stealing the \$38 worth of ammo.

7 And he is in a vehicle. It shows that
8 the vehicle is already pointed out of the stall
9 and ready to drive away and he stops and shoots
10 Andrew who is on the phone with police. I think
11 that's important. The guy who is calling the
12 police is the one that gets shot. The guy who
13 said you are going to get your ass beat is the
14 one that gets shot.

15 I saw on one of these documents the
16 Defendant's mother speculated that the gun went
17 off accidentally. That's absurd. This was
18 intentional. This was intended.

19 THE COURT: For purposes of making sure
20 we have the facts straight, my notes indicate it
21 was a revolver.

22 ATTORNEY KLOMBERG: Yes.

23 THE COURT: Agreed, Mr. Giesen?

24 ATTORNEY GIESEN: Yes.

25 THE COURT: A 357.

1 ATTORNEY KLOMBERG: I believe a 38.

2 THE COURT: A 38-caliber, either way.

3 Okay. Go ahead.

4 ATTORNEY KLOMBERG: Can I have that audio
5 now, Judge? I want to play the 911.

6 Do we have external speakers on that?

7 THE COURT: Now you've got me. I don't
8 know.

9 ATTORNEY KLOMBERG: There is an audio
10 output that is set up here, Judge. It will be
11 better quality, better. I can play it on my
12 computer and just plug in this output, but I
13 don't know.

14 THE COURT: Well, as soon as I fix my
15 mistake here, we'll get back to that screen. On
16 his system.

17 It takes time to warm up, so we can't do
18 anything while it's warming up. And if I shut
19 it down, it takes time to shut down, so we have
20 to wait. So it is what it is.

21 ATTORNEY KLOMBERG: While we are waiting,
22 this is Exhibit 2 and I would move for receiving
23 it for purposes of sentencing.

24 THE COURT: Any objections to receiving
25 Exhibit 2?

1 ATTORNEY GIESEN: No, Your Honor.

2 THE COURT: Exhibit 1 and 2 received.

3 (Whereupon, Exhibit Number 2
4 was received into evidence as
5 of July 21, 2017.)

6 THE COURT: Try it now.

7 (Audio playing.)

8 ATTORNEY KLOMBERG: I'm going to stop it
9 at two minutes. I'm going to go back to the
10 first few seconds of the recording, that's all
11 I'm going to replay a couple of times here. You
12 can hear the 911 call pick up.

13 Nine seconds into the call, you can hear
14 the gun shot. And just so that -- I'm stopping
15 it there.

16 I won't need any more audio or video,
17 Judge.

18 THE COURT: Mr. Giesen, if you need it,
19 we'll turn it back on.

20 ATTORNEY GIESEN: Thank you.

21 ATTORNEY KLOMBERG: So I think the 911 is
22 very telling. Andrew is shot through the wrist
23 while he is holding the phone to his ear and the
24 bullet goes through his arm and enters his
25 shoulder inches from his head and chest.

1 This was no accident. This was a
2 retaliatory act. Serious physical injuries
3 result, well described in the report. And there
4 is a long, long treatment. Significant physical
5 pain.

6 And then there is the PTSD that Andrew
7 describes. He is going to live with that for
8 his life. His kids and wife are traumatized.
9 The family is just never going to be the same
10 over \$38.98 in ammunition.

11 And the 911 call, I think, is the most
12 critical piece of evidence in the entire case
13 because what it shows, especially for purposes
14 here today, Judge, because what it shows is that
15 the Defendant made good on his promise, on his
16 threat. He didn't shoot Bryce. He didn't shoot
17 Kendra. He shot the manager who said we're
18 going to call 911 and report you to the police.

19 And he did so while he was doing that.
20 He shot the guy who was on the phone calling
21 911. That was no accident. That was
22 intentional. That's who he was aiming for.

23 What was an accident is that he didn't
24 kill him over \$38 in ammunition, an ordinance
25 retail theft.

1 This is a highly aggravated crime. There
2 is significant injury, significant lasting
3 effect. There is a use of a firearm. It's
4 retaliation and to trying to avoid apprehension
5 for a different crime. Witness intimidation is
6 involved. Several read-ins here that the Court
7 has dismissed and read in, all serious felonies.
8 He is under the influence of drugs at the time.
9 He brought the firearm to the event and had it
10 at the ready. It's an illegal possession of the
11 firearm. He is 17 years old. He doesn't have a
12 concealed carry permit, he is illegally
13 transporting and he purchased it illegally and
14 he is stealing ammunition for the firearm.

15 When you compare this attempted homicide
16 charge to other attempted homicide charges and
17 you look at those factors, this is a maximally
18 aggravated event for all those reasons. You
19 can't get more aggravated on an attempted
20 homicide charge. The next step is homicide.

21 And in this case when compared to other
22 attempted homicides, for all those factors
23 covering up the crime, use of the firearm, the
24 outcome, this is a maximum aggravation level
25 offense.

1 So now we have to turn to his character.
2 There is no criminal record. There is minor
3 ordinance violations that he talks about in one
4 of the reports. There is nothing significant,
5 but -- and I look at the Defendant's Presentence
6 and we have a history of aggression and violent
7 behavior throughout his childhood.

8 And it has to be throughout his childhood
9 because that's all we have. He is only 17 years
10 old, but what we have is documentation in the
11 Defense's own documents of a long history of
12 physical aggression and violence.

13 He typically acted out the perceived
14 threat in threatening talk of violent behavior
15 or by attacking others physically. He started
16 having behavioral problems, which included being
17 verbally and physically aggressive with peers
18 and teachers.

19 He was physically aggressive with his
20 mother and other adults when a limit was set.
21 He continued to have problems with poor social
22 skills and defined an aggressive behavior. And
23 those are all different points.

24 Defendant wants to claim mental illness.
25 It's not an excuse. It's not an excuse. Mental

1 illness does not cause people to commit crimes.
2 There are the majority of mentally ill people
3 who suffer with mental illness, serious mental
4 illness and they don't get criminal problems.
5 The worse behavior is some sort of disorderly
6 conduct because of manifestation of their
7 symptoms. Criminal conduct is not the result of
8 mental illness. It's not.

9 Most people who suffer from mental
10 illness do not find themselves in a criminal
11 Court, certainly not for attempted homicide.
12 And we are not even sure about the level of his
13 mental illness.

14 He goes to Mendota. And let's remember
15 Dr. Chapman's report, she had to surreptitiously
16 observe him for an extended period of time to
17 detect his highly sophisticated and effective
18 malingerer. Remember, we had a big Hearing
19 about that in this case, Judge.

20 Her diagnosis, Antisocial Personality
21 Disorder and malingering. Neither excuse
22 anything. Antisocial, not treatable. That's
23 being criminal. And malingering, well, that's
24 faking mental illness to try to get something
25 out of criminal liability in this case.

1 We have seen this before. This Court has
2 experienced criminals who have lifetime exposure
3 to mental health treatments, numerous
4 inconsistent diagnoses, they learn to be very
5 good at malingering. Because, one, the two ways
6 you can get really good at faking mental illness
7 is you be in places, facilities or experiences
8 where you can observe somebody who is truly
9 mentally ill and learn how to mimic behavior.
10 And, two, get feedback from clinicians who are
11 trying to treat you and they evaluate your
12 presentation and they tell you I believe you are
13 mentally ill or they don't and you modify your
14 presentation. We've seen this before.

15 And when we look at Dr. Chapin's report,
16 the Defendant was engaged in highly
17 sophisticated deception to make it look like he
18 was mentally ill. And she detected only through
19 lengthy observations when he wasn't aware he was
20 being observed.

21 This is a highly sophisticated, violent
22 and dangerous individual. He didn't just,
23 quote, react. He brought the gun. He kept it
24 at the ready, loaded. And then he retaliated
25 against the person who not only he warned would

1 get his, quote, ass beat, but he did so while
2 the person was actually calling 911.

3 And then he claims not to remember what
4 happened. How convenient. More manipulation.
5 Reaction? Yes. Reaction to being caught and
6 reported.

7 This is an individual who has a history
8 as shown solves his problems with violence. He
9 combines that with the
10 substance -- you combine that with the substance
11 abuse issue, the sophistication, manipulating
12 the system and we have a person that's very
13 dangerous to the public.

14 Now, there is no criminal record. He was
15 17. You can't get a criminal record before you
16 are 17. This is a person who will do this again
17 if he is left unchecked. Maybe not this same
18 thing, but he will victimize someone in the
19 future and do so violently. Because that's how
20 he deals with his problems. That's how he
21 reacts to situations.

22 Remember, the fact that he brought the
23 gun to the situation should not be lost on the
24 Court. If he knows that he has this problem
25 with anxiety and reacts violently, now he adds a

1 gun to the mix. And he used it. If that's even
2 true.

3 This man has a dangerous and violent
4 character. This man has a dangerous, violent
5 character. He is not a boy, he is not a child.
6 He is an adult. His anxiety, his pain, his
7 challenges, we have spent a lot of time
8 discussing how difficult this has been for the
9 Defendant.

10 Let's not lose sight of the fact that the
11 victims, also because of him, had to deal with
12 pain, anxiety and challenges that he alone
13 inflicted on them for nothing more than doing
14 their jobs. A loss prevention agent and a
15 manager trying to prevent retail theft and an
16 off-duty police officer trying to do what his
17 career is, to stop crime. Just for doing their
18 jobs over \$38 in ammunition.

19 The public needs protection. Long
20 incarceration is warranted to protect the
21 public. This is a very violent individual with
22 a history of solving problems with aggression
23 and violence.

24 The Presentence Investigation recommends
25 three to four years initial confinement with

1 738 days of credit. Under that sentence, he
2 will be out in less than a year or just short of
3 two years, well before he is 21.

4 The Defendant in the Presentence
5 Investigation done by the Department opines that
6 five to seven years prison is appropriate. That
7 would have him out before he is 24 on the higher
8 end. The Department of Corrections Presentence
9 is 13 to 16 years Initial Confinement with seven
10 to ten years Extended Supervision. That would
11 be put him in his late 20s early 30s with
12 supervision to around age 40.

13 And one thing that I think needs to be
14 made note of is this discussion about how he has
15 done so much better since he has been
16 incarcerated. He does well in a confined
17 setting. Mr. Berger points that out that that's
18 probably the best place to get his medication
19 monitored. I agree.

20 And what's more, is when he goes to jail,
21 he didn't do well at first. He was disruptive,
22 he flooded his cell, apparently I heard
23 something about contraband, but none of that --
24 none of that is explained away by saying well,
25 he is doing better now because of his medication

1 change alone.

2 He has adjusted to institutional
3 confinement. And he has done well. He has good
4 institutional adjustment. He does well in a
5 confined setting. And the public is protected
6 from him. I believe the Initial Confinement
7 period should be 15 years. With credit, that
8 will let him out when he is 32. But I also
9 believe that the Defendant needs to be on
10 supervision for as long as we can manage. And
11 the 20 years of Extended Supervision is the
12 maximum that the Court can impose for that
13 period. And I think that's what it should be.
14 That would keep him on supervision until after
15 his 50th birthday.

16 And we talk about brain development,
17 getting him out when he is 32, the brain will be
18 developed by then. I don't really put a whole
19 lot of stock in this case who is a violent
20 individual who is going to re-offend. And he is
21 going to re-offend even under the sentence that
22 I am recommending.

23 After reading all the material, studying
24 the case, I am convinced he is going to offend
25 violently. And not to impose this type of

1 sentence would not be doing everything we can to
2 protect the public.

3 I don't relish the idea of sending a
4 teenager to prison for 15 years, but this is one
5 of those cases that just stands out and an
6 individual who stands out.

7 This is the kind of senseless extremely
8 dangerous situation that we used to believe was
9 a big city problem. Jared Spencer brought this
10 violence to Beaver Dam. His actions, in fact,
11 did not only affect Mr. Kruse, Ms. Kunkel,
12 Mr. Berger, but has shaken the very core of our
13 small time town values.

14 He needs to go to prison to protect the
15 public for a long time. I think he is going to
16 re-offend and I encourage the Court to impose
17 that sentence.

18 Thank you, Your Honor.

19 THE COURT: Mr. Giesen, would you like to
20 commence your presentation when we reconvene?
21 I'm thinking 1 o'clock.

22 ATTORNEY GIESEN: If it would take us
23 that long to get lunch, we can come back at
24 quarter to or whatever.

25 THE COURT: I realize that you are going

to want to respond. So you may want some time to talk to your client and plan your strategy and these people want to be able to get downtown, get ordered, get served and get back here. Are we rolling the dice time-wise if we come back at 1:00?

ATTORNEY GIESEN: We can accomplish that.

THE COURT: I don't want to be cutting it short at the end. If you think we are really cramped, we can come back at quarter to 1:00.

ATTORNEY KLOMBERG: Unless Mr. Giesen's presentation is going to be three hours in length, I don't think we are going to be cramped for time.

THE COURT: Let's do 1:00. We can get lunch served without having to rush. You will have time to prepare your -- fine tune or modify your comments based on Mr. Klomberg's presentation and that should hopefully leave me some time to make my record.

ATTORNEY GIESEN: Thank you.

THE COURT: Recess and reconvene at 1:00.

(Whereupon, a short recess
was taken.)

THE COURT: We'll recall 15-CF-256. The

1 appearances are the same as previously stated.

2 I believe Mr. Klomberg concluded his
3 remarks. Am I correct, Mr. Klomberg?

4 ATTORNEY KLOMBERG: I did, Your Honor.

5 THE COURT: Exhibits 1 and 2 have been
6 offered and received. I have been informed that
7 the immediate victims to this offense are here
8 and the other person did not intend to come
9 back.

10 So Attorney Giesen, you have the floor.

11 ATTORNEY GIESEN: Thank you, Your Honor.
12 Ramona Doctor would like to address the Court
13 with respect to her grandson, Jared.

14 THE COURT: Please come up to the witness
15 stand and when you are by the flag, raise your
16 right hand.

17 (Witness sworn.)

18 RAMONA DOCTOR,
19 called as a witness herein, having been first
20 duly sworn, was examined and testified as
21 follows:

22 EXAMINATION

23 BY THE COURT:

24 Q. Please have a seat. Please feel free to
25 adjust the microphone as needed. Make sure that

1 it's close enough. Take a deep breath and relax
2 and start by giving us your name?

3 A. My name is Ramona Doctor. And I'm from
4 Madison. And Jared is our grandson. We used to
5 take care of Jared when he was smaller. And I
6 know how old he was and then he finally was old
7 enough to kind -- so Jared is not a monster.
8 Jared is a good, kind person when he's not
9 involved in something that he should not be. He
10 was not taught that way because we raised four
11 children. And none of those have got anything
12 that they land behind doors, bars I should say.
13 But that's not the case.

14 And what he did, we feel very sorry for
15 the people that this happened. And it isn't
16 just that. I'm saying it today, but we have
17 thought about that a lot. And we're sorry. And
18 so I thought it would be nice to talk about
19 Jared, something nice about him. Because he was
20 more or less our child because we took care of
21 him so much.

22 And whenever we picked him up from school
23 or something they all said bye Jared, bye Jared,
24 we'll see you tomorrow. And he was always very
25 concerned about children in wheelchairs and he

1 talked to them or took them to places, you know,
2 wherever they wanted -- excuse me -- wanted to
3 go. And then he was very thoughtful with older
4 people. He was -- he took care of them.

5 I know. I had a back surgery and he took
6 care of me and he took care of his grandfather,
7 too, which he lost now. He didn't even get to
8 see grandpa in his last moments anymore.

9 So I just want to say that he's not a
10 monster. That he's a good child, but things do
11 happen. And we preached and preached on things
12 that we thought were wrong and he finally said
13 to me one day, grandma, they shot people again
14 on television. I said Jared, they don't kill
15 those people. If they would kill those people,
16 there would be nobody to make those movies.

17 And then I heard him say they don't kill
18 those people, they just pretend. Which I felt
19 very good. Because I was the one that taught
20 him that.

21 So I mean, as I said, we're very sorry
22 for what happened to the family that, you know,
23 I don't know much about it or anything about it,
24 but he is not a monster. He is a good boy when
25 he is not in the wrong bunch. And I think

1 that's probably what happened. He got into the
2 wrong bunch. As everybody does. So to get
3 involved in those things and then when it's
4 done, it's done.

5 So that's about all I have to say. I was just
6 going to say something decent about Jared. And
7 you'll have to excuse me. I am an asthmatic.
8 That's why my voice sounds like this, especially
9 if I talk a lot. So we are sorry what happened,
10 but it happened.

11 THE COURT: Thank you.

12 Mr. Geisen?

13 ATTORNEY GIESEN: I have nothing further.

14 THE COURT: Attorney Klomberg?

15 ATTORNEY KLOMBERG: No, thank you.

16 THE COURT: Thank you, very much, ma'am.
17 You may step down.

18 (Witness excused.)

19 THE COURT: Okay. Attorney Giesen, you
20 may proceed.

21 ATTORNEY GIESEN: Thank you.

22 Your Honor, this is obviously a sad and
23 solemn day. It has had a serious impact on the
24 lives of all the families, all the persons
25 peripherally involved.

1 But I would like to emphasize to this
2 Court, that in spite of all the terrible things
3 Mr. Klomberg has said about Jared Spencer, you
4 have standing before you today for sentencing a
5 teenager.

6 At the time this incident occurred he was
7 a mere junior in high school. And we haven't
8 talked much today about the Law which the Court
9 is obligated to and we are confident will
10 follow, but the Law recognized, as I pointed out
11 in correspondence to the Court -- and this is
12 the United States Supreme Court, quote, children
13 are constitutionally different from adults for
14 purposes of sentencing. Because juveniles have
15 diminished culpability and greater prospects for
16 reform. We explain they are less deserving of
17 the most severe punishments.

18 The Supreme Court in reaching that
19 conclusion studied and cited to a great deal of
20 empirical evidence that led them to conclude
21 that youth's brains develop differently.

22 We provided the Court with a great deal
23 of scientific research in that area. And
24 consequently, they lack maturity and have an
25 underdeveloped sense of responsibility. And

1 that, in turn, leads to recklessness,
2 impulsivity, poor decisions and heedless risk
3 taking.

4 Those words of the Supreme Court describe
5 Jared Spencer perfectly.

6 Turning to the offense, certainly those
7 are attributes are no excuse for what Jared did
8 that day. It was an awful crime, it really was.
9 And it did have an impact on the victims
10 exceptionally so.

11 However, I'd like to briefly touch on a
12 few of the things Mr. Klomberg pointed out that
13 we feel are mischaracterizations or else not
14 supported by the evidence.

15 For example, I believe he indicated
16 certainly Jared's conduct indicated he wasn't
17 using any judgment at all, let alone his best
18 judgment. But if you look at the incident
19 itself and you could see it on the video, parts
20 of this Jared was in the store, he did shoplift.
21 As he left, you could see in the video he was
22 surrounded by three people and given his anxiety
23 and mental health history, that probably had a
24 disproportionate affect on him.

25 One thing that wasn't clear from the

1 video was Mr. Berger pounding on the window of
2 his car. And, again, certainly Fleet Farm is in
3 no way to blame for this, but I just read
4 yesterday ironically about, I believe it was
5 Wal-Mart, has a policy that they don't pursue
6 shoplifters out into the parking lot and risk
7 physical confrontations because it's not worth
8 \$38 to anyone.

9 But Mr. Klomberg implied, as I understood
10 his argument, that Jared who had a two-inch snub
11 nose revolver was attempting to shoot the
12 telephone out of a person's hand. Well, that's
13 first off, a preposterous, remarkable feat of
14 marksmanship. He had only gotten that gun a
15 week or two before, had never fired it before.

16 And the truth, the fact of the matter is
17 he wasn't firing at any one in particular. It
18 is a tragedy that Mr. Kruse was struck, but that
19 was certainly not Jared's intention. Had he
20 intended to harm those people, obviously there
21 would have been more than one shot other than
22 the impetuous single shot he fired as he was
23 fleeing.

24 Mr. Klomberg also might have implied that
25 Jared has some sort of juvenile history. That's

1 absolutely not true. He has no criminal
2 history. He is standing before this Court as a
3 first offender. He has never been in Juvenile
4 Court. And he has never physically attacked
5 anyone. He doesn't have any history of
6 violence.

7 Mr. Klomberg also alluded to Ms. Chapin's
8 report that mentioned for the first time in
9 14 years of psychiatric care anyone ever
10 mentioned malingering. Ms. Chapin was one of
11 the psychologists at Mendota who called me to
12 speak to me about Jared. And she talked to me
13 one or two minutes and concluded her remarks by
14 saying I am going to find him competent.

15 Well, okay, she did. He is back before
16 Court and thankfully he benefited from the
17 treatment at Mendota Mental Health, but to say
18 that he does not suffer from a mental illness is
19 just outrageous.

20 The Court has reviewed -- the Court
21 appointed psychiatrists, Dr. Schoenecker and
22 Dr. Lee, both of whom are psychiatrists,
23 diagnosed Jared with serious mental illnesses
24 throughout the course of his treatment. He has
25 been diagnosed with Bi-Polar Disorder, other

1 disorders.

2 To deny that he has serious mental health
3 problems is just ignoring reality. And Your
4 Honor might very well remember we came before
5 this Court, he was having difficulty in
6 confinement in the Dodge County Jail because he
7 wasn't getting proper medications. And
8 Your Honor Ordered -- stated that the Court
9 would impose Orders if necessary to be certain
10 that he gets his appropriate medications at the
11 appropriate times.

12 He did while he was at Mendota. He has
13 been able to continue on that fairly well with
14 remarkable, commendable results.

15 Getting back to the Law. The issues
16 before the Court today, which one of which has
17 not been addressed at all that the Court has to
18 consider, is our Supreme Court has annunciated
19 in McClary and Gallen, more or less a
20 presumption in favor of Probation. What the
21 Court said is the Court should impose the
22 minimum amount of confinement consistent with
23 protection of the public, the gravity of the
24 offense and the rehabilitative needs of the
25 Defendant.

1 We would submit that the Presentence
2 Report submitted to the Court by the Department
3 of Corrections, at least its recommendations
4 should be disregarded by the Court because that
5 Presentence Report did not address the issues
6 that Your Honor has to.

7 Specifically, the author of that
8 Presentence Report never read any psychiatric
9 history, any medical records. They said they
10 hadn't received them yet. So that author simply
11 pulled numbers out of thin air without
12 addressing or considering the rehabilitative
13 needs of the Defendant. And as the Law requires
14 and as we trust, this Court will.

15 With respect to the gravity of the
16 offense, this is a serious offense. No doubt
17 about it. Mr. Kruse suffered serious injuries,
18 but what the Court has to bear in mind is this
19 was not a premeditated act. This was an
20 impulsive, reactive, but stupid act on the part
21 of Jared.

22 The police reports and Mr. Berger
23 indicate that when he approached Jared, he was
24 shaking, he appeared panicked and reacted out of
25 panic. It was a stupid, juvenile, impulsive act

1 on his part.

2 We submit that Jared -- he has never been
3 to jail before in his life. We submit that he
4 has been punished commensurate with the gravity
5 of the offense already by having served more
6 than two years mostly in the Dodge County Jail.

7 We'd also point out, as the Court can
8 see, Jared is a slightly built teenager who
9 would doubtless be prayed upon, victimized,
10 abused and in all likely emotionally destroyed
11 if he were to be placed in a State Prison. He
12 is not the sort of person who has the character
13 or physical stature to protect himself in those
14 circumstances.

15 The State spoke about the need for
16 protection of the public. We submit, Your
17 Honor, if you look at Jared's entire history
18 since he was a young child, there is no record
19 of him ever attacking or engaging in violent
20 behavior with members of the public. He has
21 never been a threat or menace to the community
22 or to others. He has no history of violence or
23 fighting.

24 So the needs for protection of the public
25 are not compelling or overwhelming in this case.

1 I'm sure the Court has seen many people that
2 have multiple batteries, disorderly conduct,
3 repeatedly engaged in violent or disruptive
4 behavior. That's not Jared. He is a first-time
5 offender before the Court. He is, as the
6 background information indicates, immature,
7 which substantiates the lack of a neurological
8 development that the U.S. Supreme Court referred
9 to. He was socially awkward.

10 He seems with the two years that have
11 passed to have gained some insight, perspective
12 in maturity. As I indicated, and the science
13 indicates, the juvenile brain of 17-year-olds is
14 just not the same as that of an adult
15 particularly with respect to risk taking and his
16 ability to make good choices.

17 We also submitted to the Court, again, we
18 believe it's beyond debate that he has
19 substantial mental health needs. So the
20 question the Court has to address is how can
21 those best be met.

22 And as I pointed out to the Court in our
23 submission, the Wisconsin State Prisons are
24 woefully understaffed with respect to the
25 ability to provide mental health or psychiatric

1 care with the Wisconsin Resource Center being
2 the sole exception. They have less than half
3 the staff that the American Psychiatric
4 Association recommends at a minimum.

5 So the question is people can say oh,
6 sure he'll get treatment there if he is sent to
7 prison, but the reality is otherwise. There
8 simply are not the resources to treat all of the
9 inmates who are suffering from serious mental
10 illness.

11 Jared's father and mother have been
12 extremely supportive. They are here every week
13 to see him at a minimum. They have implored me
14 to contact the jail to be certain that Jared is
15 getting the appropriate medications. They love
16 their son. They are extremely concerned about
17 his immediate well-being and his long-term
18 well-being.

19 And we submit that that would best be met
20 if he were under their strict supervision. And,
21 of course, with the Department of Corrections
22 adding the stringent conditions. That is one
23 thing that the State's Presentence Report does
24 properly address; that he maintain absolute
25 sobriety, that he have assessments, attend all

1 groups, counseling, treatment as recommended,
2 that he maintain full-time employment or
3 schooling and that he comply with all of his
4 medications.

5 There are ways to monitor that. Periodic
6 testing, for one. And obviously, that he have
7 no contact with Mr. Kruse, Berger or Fleet Farm.

8 One other thing that's very unusual about
9 this case is the very strong family support that
10 Jared has the benefit of. And that's just not
11 to Jared's benefit, that's to all of our
12 benefit, to the entire community.

13 As I said, his father and mother haven't
14 missed a Court appearance. His grandmother is
15 here, his siblings are here. His sister. They
16 are behind him and will do everything to help
17 and provide him with the guidance and support he
18 needs. I am certain, of course, people come in
19 and stand in front of you in an empty Courtroom.
20 People who aren't fortunate to have that strong
21 support.

22 Judge, it's apparent that this has been a
23 tragedy for at least two families. And
24 everybody here wishes that July day could be
25 revisited, but it can't. So what the Court has

1 to address today is what is the appropriate way
2 to resolve this.

3 Jared has spent two years in confinement
4 already. As I indicated, that's a pretty
5 serious punishment for somebody who has never
6 ever been locked up before, who has never
7 committed a crime.

8 We would suggest that the Court impose
9 and stay a sentence and place Mr. Spencer on
10 Extended Supervision or Probationary Supervision
11 for a lengthy period of time. If the problems
12 that the State imagines ever manifest
13 themselves, then the answer would be clear and
14 Jared would be removed from society.

15 If the Court feels that some additional
16 incarceration is necessary, and we would
17 respectfully submit it is not, we would suggest
18 a sentence of three or four years Initial
19 Confinement. And the reason we make that
20 suggestion is at that point Jared would be
21 22 years old. He hopefully would have completed
22 his high schooling while in the institution, but
23 importantly his brain would be mature. That's
24 the age that psychiatrists, psychologists,
25 neurologists recognize a person generally does

1 reach maturity.

2 Finally, I again wish to extend our
3 deepest sympathy to Mr. Kruse and his family.
4 It was and remains a terrible thing that's going
5 to haunt them forever and it's going to haunt
6 Jared forever, but I was moved by his comment
7 that the Good Lord teaches us to forgive. And
8 Mr. Kruse wanted his children to hear that and
9 learn that lesson today. He is forgiven.

10 We ask the Court to take that into
11 account, as well, in imposing his sentence.

12 Thank you.

13 THE COURT: Mr. Spencer, is there
14 anything that you would like to say before
15 sentence is imposed?

16 DEFENDANT SPENCER: Yes, Your Honor.

17 THE COURT: Go ahead. You have the
18 floor. Please use the mic.

19 DEFENDANT SPENCER: On July 15, 2015 I
20 made the worse decision of my life. After
21 stealing two boxes of ammunition, I was
22 confronted by Andrew Kruse and his co-worker,
23 Kendra Kunkel. Another man named Bryce Berger
24 tried to help Andrew and Kendra to get me back
25 into the store.

1 I walked to my car and closed the door.
2 I could have just driven away, but I didn't. I
3 was afraid. I was panicked. And I shot Andrew
4 and sped off. Andrew was just doing his job.

5 I have never handled myself well in
6 stressful situations. It's something that I
7 have struggled with my entire life. This
8 horrible situation is the result of a hundred
9 poor decisions while being a teenager.

10 I stopped taking my medication. I
11 stopped going to school. I stopped going to
12 church. I started smoking weed, popping Xanax
13 and Percocet. In a few years I managed to screw
14 up everything that I could have going for me.

15 Everywhere I look, people are playing
16 with guns and doing drugs.

17 THE COURT: Say that again.

18 DEFENDANT SPENCER: Everywhere I looked,
19 people were playing with guns and doing drugs.
20 And that's not how I want to live my life. A
21 lot of people -- looking at myself now, I wish I
22 could take back the past few years of my life.
23 I wish I had never gone around people who
24 thought guns and drugs were normal. I wish I
25 could be a kid again.

1 I made adult decisions that have adult
2 consequences, but I never learned how to be an
3 adult. I wish I could take it all back. Not
4 just for me, but for everyone who has been hurt
5 by my decisions. I'm not sitting here saying
6 that I shouldn't be punished for the horrible
7 mistake I made when I pulled that trigger.

8 I opened a door to a life I don't want to
9 live. All I want to do now is close that door.
10 My only chance to straighten out my life is
11 through the mercy of the Courts. I just pray
12 that I am left with enough time to create a
13 meaningful life for myself.

14 I don't know if I will ever understand
15 why I did what I did, but I did it. And I know
16 it was wrong. On July 15, 2015, I shot
17 Andrew Kruse and I'm so, so sorry.

18 Andrew, I affected your life in one of
19 the worst ways possible to affect someone's
20 life. I wish I could take it back, but I can't.
21 My apology can never be expressed adequately in
22 words alone, but I never felt more regret, shame
23 about my actions than I do now.

24 I also want to apologize to Kendra and
25 Bryce. Nobody should have to go through what

1 they did that day. I'm truly sorry. And I hope
2 you can find in your hearts to accept my
3 apology.

4 That's all.

5 THE COURT: Any reason why sentence
6 should not now be imposed?

7 ATTORNEY GIESEN: No, Your Honor.

8 THE COURT: Well, before I forget to say
9 it, that was one of the most well-delivered
10 comments I have ever heard from anybody.

11 And, Mr. Spencer, do I have your
12 permission to read parts of that without
13 disclosing your name to other young people who
14 might be sitting in that chair?

15 DEFENDANT SPENCER: Of course,
16 Your Honor.

17 THE COURT: Every one in here has an
18 emotional investment in this case. Good or bad,
19 the facts that are reported in both the
20 Prosecution and the Defendant's Presentence
21 Memorandums basically are in agreement. I found
22 two statements that didn't quite match up.
23 Whether they are important enough for me to
24 mention here today or not, I don't know.

25 I want to start out by saying that this

1 crime is not the fault of Mr. Spencer's father,
2 mother, teachers, treatment professionals, Fleet
3 Farm employees or anyone else but Jared Spencer.

4 I've got to believe that his mom and dad
5 are in a living hell right now probably asking
6 themselves every day what could we or should we
7 have done.

8 The reports indicate that dad did not
9 believe that the meds were appropriate for Jared
10 when he was a young child. I was Family Court
11 Commissioner for 29 years. It's common that
12 moms and dads don't agree on the meds that the
13 child should or shouldn't be getting. Most of
14 them end up growing up perfectly well-adjusted
15 and never have to sit in that chair. A parent
16 has a right to make that discretionary decision
17 as to what treatment their children should
18 receive.

19 The reports indicate mom was lenient and
20 dad was strict. Not uncommon that one or the
21 other is lenient and one or the other is strict.
22 Most of the time the kids grow up more or less
23 perfectly fine.

24 Mom and dad let Jared choose who he
25 wanted to live with. I will tell you just as an

1 editorial comment, that I as Judge and Family
2 Court Commissioner never allow the child to
3 decide where he or she wants to live unless in a
4 rare occasion everybody is well-adjusted and
5 there is no controversy and no fighting, which
6 happens once in awhile, but as a general rule
7 it's a bad idea because you lose your control
8 over the child.

9 What's the difference between an adult
10 and a child. The parents have control over a
11 child that they don't have over an adult. A
12 parent can even walk into the doctor's office or
13 the school office and find out what their kids
14 medical exam was or grades are.

15 So when you let the child decide where he
16 is going to live, you just basically cut your
17 own control in half or worse. But did that have
18 anything to do with this? I don't think it did.
19 So don't blame yourself for all these difficult
20 decisions you had to make while this person was
21 growing up.

22 With the benefit of hindsight, we can all
23 say that maybe we should have acted differently.
24 Maybe the people at Fleet Farm need to revise
25 their policies. Nothing that Fleet Farm or the

1 Fleet Farm employees or the off-duty police
2 officer did had any causal effect whatsoever on
3 this crime. So if you want to reflect on it and
4 do an analysis and decide if maybe you should
5 have done something different, fine, but don't
6 blame yourself for this.

7 The evidence indicates that while Jared
8 was at Mendota Mental Health he was taking his
9 meds on a consistent basis with noticeable
10 improvement. Everybody has commented to that
11 effect, but with hindsight maybe a Chapter 51.20
12 commitment would have been in the treatment that
13 he should have received.

14 The problem is when I look back at the
15 record, there probably was no particular
16 incident that would have prompted somebody to
17 think of that. So here we are.

18 The sentencing report of Ms. Schmidt on
19 Page 18 says Jared poses some risk to the
20 public. This is his Presentence Report because
21 of his mental health issues and past substance
22 abuse. It is imperative that he continue to
23 receive mental health treatment both in and out
24 of custody. And I think -- well, I accept all
25 of the mental health comments that have been

1 made and really there is no dispute. The same
2 records are in both Presentence Reports.

3 The mental health issues do not rise to
4 the level of a defense. And I am not aware of
5 any authority for the proposition of -- the
6 proposition that Anxiety Disorder or depression,
7 which are the two most consistent common threads
8 in all of his diagnoses, could be expected to be
9 a major contributor to Mr. Spencer's conduct.

10 This young man has had a serious conduct
11 problem since the age of four. Normally, I
12 would not consider conduct of a person at the
13 age of four to be the least bit significant to
14 any decision I have to make. And Mr. Spencer is
15 going to be sentenced for what happened on
16 July 15, 2015, not on what he did in grade
17 school and not on what he did in high school,
18 but the significance of this conduct record that
19 goes back to age four is that it shows a
20 consistent pattern of behavior which due to the
21 fact that he was 17 is the only evidence that we
22 have as to what and who is Jared Spencer.

23 Some people say we are what we eat.
24 Well, you could also say we are what we do. I
25 do not believe it's common for a preschool child

1 to be expelled from preschool for uncontrollable
2 behavior. Now, whether that happened or not, I
3 don't know, but that's what's in the report.

4 As I said before, I wouldn't care about
5 that if it weren't for the fact that that was
6 the start of the pattern of consistent behavior
7 problems that have been associated with Jared
8 Spencer through his entire life.

9 Third grade 2006 and 7, weekly or monthly
10 calling teacher's names and not getting along
11 with other students. February of '09 suspended
12 from school for tearing apart the assistant
13 principal's office. In 2012, suicide threat,
14 disorderly conduct in school, refused to do
15 homework. In 2015, swore at a teacher something
16 to the effect -- I don't know if I copied it
17 entirely correctly, quote, this is fucking
18 bullshit, you better get Mrs. G here before I
19 kick your ass. And then later to someone else
20 fuck you, bitch.

21 He lost a job as a result of a
22 disagreement, which I usually interpret it to be
23 a euphemism for insubordination. What happened,
24 I don't know, but most people who have a
25 disagreement at work lose their job. The boss

1 always wins the argument.

2 Right before the shooting happened, he
3 told the Fleet Farm people who were doing their
4 job that's how people get their ass beat. Not
5 very pleasant things to have to listen to in
6 Court.

7 Mr. Giesen, who did a wonderful job of
8 representing this young man and did a wonderful
9 job today, alluded to some of the things that
10 Mr. Klomberg said. Mr. Klomberg didn't make
11 those things up. They are there. They are not
12 going away.

13 And there isn't a lot -- there is no --
14 how should I put this? After giving it some
15 thought, I came up with one little tiny silver
16 lining in looking at this whole series of
17 events. Nobody got killed. Other than that, I
18 am not coming up with a flip side or a silver
19 lining because there just isn't any.

20 Maybe two. He is still a young man. He
21 still has time to make something of himself.
22 And I have heard reports of people who walk out
23 of prison, moved away, started a new life and
24 actually stayed out of trouble for the rest of
25 their lives.

1 So is it possible, Mr. Spencer? It's
2 possible. Is it easy? No. But if ever there
3 was a time when you do dedicate yourself to
4 helping yourself do better, this would be the
5 time to start. You have friends and family who
6 are willing to support you.

7 As Mr. Geisen said, very few people
8 sitting in that chair have anybody in Court with
9 them. And you do.

10 After this incident happened, the other
11 thing anchoring this chain of conduct that
12 impresses me, unfortunately not to his benefit,
13 is that after he had been arrested, he flooded
14 his cell, threw water, he didn't think it was a
15 big deal. And he refused his meds.

16 And I am finding it very difficult to
17 reconcile how a 17-year-old arrested for
18 attempted homicide and in the jail could -- I
19 mean, I realize 17-year-olds do that stuff all
20 the time, but one would think when you are in
21 jail for having shot somebody and you realize
22 that you quit taking your meds three weeks ago,
23 that this would be a good time to just do what
24 you are told for once.

25 By refusing his meds, he sent a signal to

1 the staff that he does what he wants when he
2 wants. If he doesn't want to take his meds, he
3 is not going to take his meds.

4 And the reason that I am mentioning that
5 is that ties in with what got us here. He had a
6 mom, a dad, school, people, counselors, any
7 number of counselors working with him. He could
8 not or would not take his meds. And when I am
9 sitting here trying to decide what do we do with
10 Jared now, and I find in the report that when he
11 was in jail after he had been arrested and was
12 offered and prompted to take his meds, he
13 refused to take them.

14 And now I am being asked to let him go
15 back home and let his mom and dad, and I am not
16 criticizing mom and dad at all. I raised two
17 kids. I could never get them to do what I
18 wanted to do, they did what they wanted.
19 Fortunately, most of the time it was what I
20 wanted, but if they didn't want to do it, they
21 didn't do it. That's life. Kids come in here
22 all the time in trouble and I say I can't make
23 you do anything. You are the one driving the
24 boat. The thing of it is you push, somebody is
25 going to push back. So you can't get somebody

1 to do what they don't want to do.

2 Jared Spencer doesn't want to take his
3 meds. Never did. The question is will he ever.
4 Now we are in a situation where I have to weigh
5 his ability to stick with the meds against the
6 public's safety. And I am being asked to roll
7 the dice and he has no good track record
8 whatsoever for me to look back on and say yeah,
9 he can do this.

10 If it hadn't been for the incident in
11 jail, I'd say maybe, but that is a big -- to me
12 that is a very important fact here. You can't
13 do it when the jailer prompts you to do it, it's
14 not going to happen.

15 Due to his age and the science of
16 adolescent brain development, Jared Spencer is
17 entitled to leniency at sentencing. Normal
18 brain development of adolescents makes it more
19 likely that they will take unreasonable risks
20 and makes it more difficult for them to exercise
21 judgment or appreciate the consequences of their
22 actions.

23 An argument could be made that Jared's
24 brain development was adversely affected by the
25 trauma resulting from the stress of his parents

1 divorce. A lot of kids grow up with a nasty
2 divorce and they don't all end up sitting in
3 Mr. Spencer's chair. So I don't know if that
4 had anything to do with it or not.

5 The public policy and the Law which says
6 that Mr. Spencer is entitled to leniency is
7 supported by science which is generally accepted
8 in the scientific community, the medical
9 community, the mental health community and the
10 legal community. And it's the Law. So I'm not
11 arguing with it or resistant to it one bit. I
12 understand it. And even if I didn't like it,
13 it's the Law so I have to follow it.

14 At the same time, for those of you who
15 don't like it, an eye for an eye and a tooth for
16 a tooth isn't the Law, either. The Law is what
17 it is. So we have to follow it.

18 Here are the facts that I think are most
19 pertinent to my decision. Mr. Spencer has a
20 long history of mental health issues. A long
21 history of mental health medications and
22 treatment. Facts tend to indicate that his
23 condition improves when he is on the right meds
24 and when he takes them. He does not always
25 consistently take his meds. He stated that he

1 stopped taking his meds a few weeks before this
2 happened.

3 His mom said she put the meds out,
4 assumed he was taking them, which implies to me
5 that it's not just recently that he quit, but
6 maybe he hasn't been taking them all along, but
7 that I am not sure about.

8 Mom reports that his mood was horrible
9 when he stopped taking his meds. And lastly,
10 which I already commented, he refused to take
11 the meds even when prompted to do so in jail.

12 Mr. Spencer overreacts to tactile
13 stimulation. He becomes extremely anxious and
14 distressed when someone comes into close
15 proximity to him or if he is touched. I am not
16 sure, there is no evidence that says the extent
17 to which he has control over this or the extent
18 to which treatment can help, but this has been
19 what's reported.

20 Mr. Spencer, his parents, all of his
21 treatment providers, the school counselors and
22 all the people that have worked with him over
23 the years have not been able to control his
24 behavior which has resulted in a persistent
25 pattern of destructive and aggressive behavior,

1 absence from school and a conviction for
2 attempted first degree intentional homicide.

3 His conduct has resulted in series bodily
4 injury to the person shot. The serious
5 long-term result to pain, suffering, disability
6 and psychological damage to them, the families,
7 everybody who saw it and a substantial list that
8 harmed everybody that was in the neighborhood.
9 How many people were within range of that 357 at
10 the time it went off. You are talking about
11 Fleet Farm in Beaver Dam. You are not out in
12 the middle of a field.

13 I also find, as suggested by
14 Attorney Giesen, the Wisconsin Prison System
15 does not have adequate resources to treat
16 inmates for the mental health issues. Maybe if
17 I had had the Director of Mental Health issues
18 here, they might say wait a minute, the American
19 Psychiatric Association recommends high in the
20 sky stuff and what we are doing is more than
21 adequate. I don't know what they would say, but
22 I'm sure they would like to be heard on that.

23 But I think it's reasonable to believe
24 that he's -- that his level of mental health
25 treatment would maybe not be ideal in the

1 Wisconsin Prison System. I have heard all kinds
2 of reports from people that have been there and
3 say I never got the treatment I thought I was
4 going to get. Whether it be substance abuse
5 treatment, mental health treatment or whatever.

6 So one of the things that I have to
7 comment on, treatment whether it be substance
8 abuse treatment or mental health treatment isn't
9 going to be delivered like a pizza. If you need
10 it or if you have a loved one that needs it or a
11 friend that needs it, you have to take the
12 responsibility of getting it and following
13 through. It's not somebody else's job to make
14 sure you get the treatment.

15 Now, he is a 17-year-old. You don't
16 expect a 17-year-old to do that and his mom and
17 dad had, to their credit, put him in as much
18 treatment as they could, but at this point on
19 we're getting as much treatment as he can, but
20 it's not a perfect world. I don't know what
21 he's going to get.

22 I conclude from those facts that
23 Mr. Spencer's inability to control his actions
24 constitutes a substantial risk to the safety of
25 himself and the public. By drawing a gun, he

1 could have been shot by the off-duty policeman
2 or someone else who had a concealed carry
3 permit.

4 He caused irreparable harm to a large
5 number of victims and could have harmed or
6 killed more. There is no reason at this time to
7 believe that any level of supervision will
8 ensure the safety of the public. Mr. Spencer
9 cannot be trusted to take his meds as
10 prescribed. And I am not aware of any amount of
11 the supervision outside a custodial setting that
12 would be adequate. I don't buy the argument.
13 The facts don't support the argument that he can
14 take his meds as prescribed without being in
15 custody. He doesn't always take them when he is
16 in custody.

17 Now, there are some conflicting
18 interpretations that I want to address. I
19 specifically reject the assertion that
20 Mr. Spencer overreacted to the actions of
21 someone else or that the gun accidentally went
22 off or that he did not intend to harm someone.

23 Now, I can't read his mind, but a Jury is
24 instructed that you can find intent by looking
25 at the circumstances. I find that the reports

1 of the victims and witnesses is accurate.
2 Mr. Spencer threatened harm to the victims
3 before he fired the gun. He slowed or almost
4 stopped the vehicle, retrieved a handgun, rolled
5 the window down, pointed the handgun at the
6 victim and pulled the trigger striking the
7 victim. I don't know how far away they were,
8 but they were at least one car length away as
9 viewed by the video. Agreed everybody or not?
10 Because he had to pull it out far enough
11 to avoid the parked cars he drove behind. So he
12 had to be one car length away. And they were on
13 the sidewalk.
14 ATTORNEY KLOMBERG: That's a reasonable
15 assumption, Judge.
16 THE COURT: Am I misinterpreting the
17 video, Mr. Giesen?
18 ATTORNEY GIESEN: I would say it appeared
19 to be at least 20 feet away.
20 THE COURT: Okay. So he was in a locked
21 vehicle. He could have driven away. He
22 deliberately and intentionally slowed down,
23 lowered the window, retrieved the gun, pointed
24 it and hit somebody. The gun was a revolver.
25 Revolvers come in two different kinds, single

1 action and double action.

2 What is the significance of that? A
3 single action has to be cocked. So it's one
4 thing to point the revolver at somebody. When
5 you cock it, you make the decision that you
6 might fire it. It takes a little effort to cock
7 a revolver. Once it's cocked, it might have a
8 hair trigger or it might have a fairly heavy
9 trigger. That depends, but it takes a little
10 effort to cock a 357 revolver.

11 Anybody disagree with that?

12 ATTORNEY KLOMBERG: No.

13 THE COURT: If it's a double action, then
14 you don't have to cock it, but the trigger pull
15 is a lot harder on a double action. So if it's
16 a double action, it didn't accidentally go off.
17 It did not happen. Because it takes a lot of
18 trigger pull. So one way or the other, it
19 didn't accidentally go off.

20 Jared has a long history of mental health
21 issues and a wide variety of diagnoses. Common
22 threads in his various diagnoses over the years
23 include anxiety, depression, Attention Deficit
24 and Hyperactive Disorder and control. And I
25 didn't bother to catalogue all of them, but

1 those are the ones that appear to come up
2 consistently all throughout his course of
3 treatment.

4 One of the more recent diagnoses which
5 resulted from his placement at Mendota Mental
6 Health Institute include Antisocial Personality
7 Disorder and malingering.

8 Malingering is commonly defined as
9 intentional production of false or grossly
10 exaggerated physical or psychological symptoms
11 motivated by external intents such as avoiding
12 work, obtaining financial compensation, aiding
13 criminal prosecution or obtaining drugs.

14 Antisocial Personality Disorder is
15 described as a disregard in violation of the
16 rights of others. And I am not sure how much
17 the mental health community agrees on the
18 symptoms of Antisocial Personality Disorder or
19 whether it can be treated, but I think the
20 profession agrees that Antisocial Personality
21 Disorder people are likely to be irritable,
22 aggressive, as well as irresponsible. Numerous
23 somatic complaints and, perhaps, attempt
24 suicide.

25 Due to their manipulative tendencies it's

1 difficult to tell whether they are lying or
2 telling the truth. I got this from the
3 Psychology Today website. And it's about the
4 same when I look at my copy of the DMS4, it's
5 pretty much the same.

6 Anybody disagree with what I said?

7 ATTORNEY KLOMBERG: No.

8 THE COURT: I'm not talking as a trained
9 mental health professional, I am just talking
10 about the basic generic terms for these
11 diagnoses.

12 Now, if one were to accept the validity
13 of these two diagnoses, one could conclude that
14 the primary explanation for his behavior is his
15 Antisocial Personality Disorder and his
16 malingering.

17 I also note that Antisocial Personality
18 Disorder is not normally ascribed to a minor or
19 a child. So maybe that's why it didn't come up
20 on -- I'm just saying maybe that's why it didn't
21 come up earlier. I don't know. I do note when
22 I saw that, here's my reaction to it.

23 Mr. Spencer's mother reported that Jared
24 missed a lot of school because of stomach
25 problems, but the doctor's couldn't find

1 anything wrong with him; PSI, Page 15.

2 By his own admission he played sick a lot
3 to get out of school; Page 16 of the PSI.

4 I already outlined his behavior problems.
5 So when you look at the pattern of his behavior,
6 and I don't want to repeat it all now, one could
7 say okay, you made these two diagnoses dovetail,
8 he missed school because he played sick and
9 fooled his mom. He couldn't fool the doctors,
10 but he fooled his mom.

11 He spent a lot of time at home doing his
12 gaming which gaming in itself is okay, but now
13 he is in a situation where I don't know if it is
14 valid or not, but what he claims is he has these
15 reactions to people invading his space. I'm not
16 a mental health professional. I think it's a
17 fascinating subject, but I don't have
18 professional training on it. I am not going to
19 pretend to be one here.

20 For the purpose of this sentencing, I am
21 not going to prescribe any particular diagnosis
22 to him because after reading all the reports, I
23 don't know which one is valid and which isn't.
24 And maybe they are all valid at the time and
25 maybe they are not, I don't know, but it would

1 be easy to conclude that those two are ones that
2 really fit the conduct.

3 So let's assume for purposes of
4 discussion that Mr. Spencer did not have
5 Antisocial Personality Disorder or malingering.
6 The assertion is made that he has these
7 reactions to somebody intruding on his personal
8 space and giving unwanted physical conduct.

9 The question is, as I analyze, how do we
10 apply these facts to the sentencing? What's the
11 risk to the public given those facts if I assume
12 that those are true?

13 Under these circumstances releasing Jared
14 Spencer into society, society which contemplates
15 what, people. You don't have society without
16 people. If you want to go to society, it
17 implies interaction with people. If you want a
18 homestead in Alaska and build a cabin and be a
19 mountain man, different story. If you get a job
20 as a forest ranger, in the middle of a forest on
21 a tower with a pair of binoculars and you don't
22 have to talk to anybody, different story, but
23 that's not most people. One cannot go to work,
24 attend a softball game, a flea market, go to
25 school, go to a concert, go to a restaurant or a

1 bar or a Summer Fest or the State Fair or the
2 County Fair without somebody, over all some
3 people do that still, without somebody
4 encroaching on your personal space. I mean,
5 that's what happens when you are around people.

6 How likely is it that you are going to go
7 through daily routine without every once in
8 awhile bumping into somebody who is having a bad
9 day, who's got a bone to pick with somebody, who
10 maybe has had a few drinks too many, which we do
11 live in Wisconsin, and not having some mild
12 confrontation with somebody that's likely to
13 trigger Mr. Spencer's reaction. I mean, it's
14 not going to happen.

15 You can't go to school, go to work, go
16 out in public without bumping into somebody or
17 occasionally bumping into somebody that wants to
18 pick an argument. So if that what's going on
19 here, that doesn't paint a very good picture for
20 him, either.

21 So I can't make a finding that his
22 character and rehabilitative needs can be
23 addressed in a setting that is not custodial.
24 It hasn't worked so far when he was a child and
25 when you had more control over him. Do I like

1 it? No. I think it's terrible, but I have to
2 look at the seriousness of the offense.

3 I don't think I should spend a lot of
4 time elaborating on the seriousness of the
5 offense, but for the grace of God it would have
6 been a homicide. So 60 years in prison is the
7 max.

8 Now, if I say something and I misspeak, I
9 want to correct myself and I won't be offended
10 if you say wait a minute, Judge, you got that
11 wrong.

12 So how much time do I need to spend on
13 elaborating the seriousness of the offense is
14 way up there. Not much. The need to protect
15 the public, well, that needs to be developed a
16 little bit here because obviously when you shoot
17 somebody, the need to protect the public is a
18 major factor. The question is can it be done in
19 some other setting.

20 And if Mr. Spencer can't take his meds
21 and we can't make sure he takes his med, that's
22 a big problem. If he has this problem with
23 people invading his space and bumping into him
24 and getting into some kind of mild confrontation
25 with him, that's a problem. Apparently it was a

1 problem all through school. And then he quit
2 school.

3 So the problem was never addressed. What
4 happened was he by his own statement got himself
5 out of school so he didn't have to bump into
6 somebody, he didn't have kids invading his
7 personal space. Maybe that's why he doesn't
8 have more on his record. I don't know.

9 All I know is this; when I look at the
10 need to protect the public, I cannot make a
11 finding based on his track record that it would
12 be a reasonable risk to put him on Probation.
13 The facts don't support it. Too much at stake.
14 His track record just doesn't support it. And I
15 wish I could, because I do not like the idea of
16 having to send somebody to prison at the age of
17 17.

18 And I analyzed all of the reports I read,
19 all the things that Mr. Giesen sent me and I
20 believe all the information that he sent me and
21 I'm not fighting it, I am endorsing everything
22 he said about brain development and mental
23 health treatment and all that, but when you pull
24 a gun and point it at somebody and pull the
25 trigger and hit somebody, most people expect you

1 to go prison for a long time.

2 So the last thing is the character and
3 rehabilitative needs of Mr. Spencer. And I
4 don't have enough information here to know about
5 the rehabilitative needs. And the reason I
6 don't -- let's just put it this way; I don't
7 have as much as I like. Because I know he has a
8 long history of mental health issues.

9 I know that he has had a long course of
10 treatment and I know he has had a number of
11 different meds over the years. The treatment
12 options have been there. They have been
13 explored. They have been tried. We know that
14 his placement at mental health has improved his
15 condition greatly. Whether it has addressed --
16 whether the Mendota Mental Health treatment has
17 or would or will address his conduct issues, I
18 don't know. I don't have a report that says
19 yes, we know why he does this and we are
20 treating it.

21 His behavior has improved. His ability
22 to interact has improved. A lot of improvement
23 has resulted, but is that really addressing his
24 reaction that he has to people, does it really
25 address his ability to control his behavior, his

1 ability to behave himself when he is in custody,
2 you can only draw so many conclusion from that.

3 Because I can't necessarily find that
4 because he hasn't misbehaved lately, that once
5 we cut him loose that he is not going to go back
6 to the old behavior even with the treatment.
7 It's not like having a broken leg where somebody
8 can say I set the leg eight weeks ago and now he
9 is good to go. It doesn't work that way.

10 So I don't know what rehabilitation or if
11 there is a rehabilitation that's going to
12 address his conduct. Still a question mark.

13 What about his character? Well, there is
14 two Jared Spencer's. There is the good
15 Jared Spencer and then there is the other one.
16 And, unfortunately, the good Jared Spencer has
17 to do the time with the other one. There is the
18 Jared Spencer that is kind, he is very bright, I
19 can tell by his statement that he's very bright.

20 He has excellent communication skills.
21 He did well in school when he wanted to play
22 football. He got an A in ceramics. And when he
23 didn't want to do something, he got Ds and Fs.
24 Am I right or wrong, mom and dad? So is he a
25 bright person that can do well if he is in the

1 right surroundings and has -- I don't know if I
2 should say has a hammer hanging over his head or
3 has a terror out in front of him.

4 So I have to believe that he has the
5 ability to be productive and stay out of
6 trouble. He just hasn't been able to do it yet.
7 I haven't had that many people in here where
8 nobody was able to stand up and say there are
9 some good things about him. Those people are
10 really rare where they just can't say anything
11 good about them.

12 And I have had to say to a lot of moms
13 and dads and people sitting in that chair the
14 bad so and so is going to have to do the time
15 with the good one. That's just the way it is.
16 I can't just send half of you there.

17 Now, when I look at all three of those
18 factors, I almost wish Mr. Klomberg hadn't made
19 the recommendations that he did because I don't
20 want somebody to say yep, the Judge just latched
21 onto it because that's what he wanted. That is
22 not true. But I will tell you that if he were
23 an adult he'd be getting a lot more. He'd be
24 doing 25 minimum in.

25 So I have to give him some leniency,

1 which I am perfectly willing to do, but
2 everything has to be put in perspective,
3 everything has to be put into context.

4 There is no context about the seriousness
5 of the offense. When you give me a context --
6 okay, I'll give you one. Some guy goes in the
7 movie theater and he shoots 50 people. And then
8 you have Jared who shoots one. So one is a lot
9 less than 50. Other than that kind of thing,
10 you can't put pointing a gun at somebody and
11 pulling a trigger and putting it into any
12 context that has any mitigating circumstances
13 behind it. There aren't any.

14 When I look at the seriousness of the
15 offense, I can't come up with a lot of ways to
16 say well, he isn't that bad. Because it is bad.

17 And there is a serious threat to the
18 public. I'm not saying he is a raving maniac.
19 I'm saying the bad Jared Spencer isn't taking
20 his meds. And when he's in his mode that he
21 does what he wants to do he is a danger to
22 himself and others.

23 So when I look at the concept that says
24 we give leniency to juveniles because they are
25 children and their brains aren't as developed, I

1 have to put that in context. And there is some
2 context there. If he were seven and he picked
3 up a gun and shot somebody and he said to his
4 grandma well, grandma people get shot on TV all
5 the time, different story. Because a
6 seven-year-old doesn't understand permanency of
7 death. The seven-year-old turns the TV on the
8 next day and the same people are all there.

9 A 17-year-old is not in the going to be
10 held to that low of a standard. If he were 18,
11 the standard of leniency wouldn't even a fly.

12 Now, science would tell you that 18 means
13 nothing. Maybe it should be 22 or maybe it
14 should be 25. And a lot of people would say it
15 should be 30. Maybe it should. But the point
16 is if we were a year older, we wouldn't be
17 talking about the Supreme Court Rules that says
18 you have to give leniency to a child. So when I
19 talk about the leniency, I have to consider the
20 fact that he was 17 and not seven.

21 The other comments, there are three
22 Supreme Court cases that Mr. Giesen cited, or
23 two I think it was, dealt with mandatory life
24 imprisonment. And we had a 14-year-old and I
25 think a 17-year-old, if I remember the facts

1 right, that got convicted. One was first degree
2 intentional homicide and the other was something
3 about the same category. And the Statute in the
4 State at the time required mandatory life
5 without parole and the Supreme Court said no,
6 you can't do that to a child.

7 So it's not quite the same facts here
8 because we are not talking about life
9 imprisonment without parole, we are talking
10 about something a little less severe. Severe
11 enough, but not quite the same offense. But I
12 accept and believe in the concept that a
13 juvenile is entitled to leniency under the Law.
14 It is what it is.

15 The bottom line is this; I think the
16 minimum sentence that would do justice to the
17 need to protect the public and seriousness of
18 the offense, and I know that the family is
19 not -- nobody is going to like this. I know the
20 victims aren't going to like it, either.

21 But these are the findings that I make
22 based on the facts that both parties gave me;
23 30 years in the Wisconsin State Prison, 15 in
24 and 20 out.

25 And I agree with what Mr. Klomberg said

1 that the 15 years will give him time to let his
2 brain finish developing. It's an amount of time
3 that is the minimum amount of time that would do
4 service to the need to protect the public and
5 the seriousness of the offense.

6 And the 20 years I think is appropriate
7 because I have -- I don't know enough about his
8 condition and the supervision that would be
9 required to be able to say how long he needs to
10 be on, but I can't make a finding that something
11 less than that would be appropriate, I guess is
12 the way to put it.

13 So I'm hoping that at the end of 15 years
14 Mr. Spencer is going to be in a position with
15 some educational training, which is available in
16 the prison and with the vocational training
17 that's available to him, to walk out that door
18 and he can hold his head up high and say I paid
19 my debt to society. Now I am going to move on
20 and make something of my life.

21 Take advantage of whatever mental health
22 treatment is available to you when you get out
23 and stick with it. And if you have to take
24 meds, take the meds and salvage the rest of your
25 life. I think you have the ability to do it.

1 And I also endorse Mr. Giesen's
2 recommendation that it's possible the Wisconsin
3 Resource Center would be something that needs to
4 be seriously looked into. I'm not going to tell
5 the Department of Corrections how to run their
6 institution, that's up to them. They have
7 trained professionals, but I think that
8 Attorney Giesen makes a valid point and that
9 needs to be explored.

10 I see no reason why Mr. Spencer would not
11 be eligible for Substance Abuse and Challenge
12 Incarceration. I don't know the extent to
13 which --

14 ATTORNEY KLOMBERG: Your Honor.

15 THE COURT: It's a disqualifying offence,
16 isn't it?

17 ATTORNEY KLOMBERG: It's a disqualifying
18 offense. He can't be eligible for the programs.

19 THE COURT: That's too bad.

20 Mr. Spencer, you have the right to seek
21 post-conviction relief. If you decide to do so,
22 proper paperwork has to be filed and served
23 within 20 days. Your lawyer will review those
24 options with you.

25 Do you have any questions, sir?

1 Mr. Giesen, anything else we need to
2 address?

3 ATTORNEY GIESEN: No, Your Honor.

4 THE COURT: Mr. Klomberg.

5 ATTORNEY KLOMBERG: Just a couple
6 clarifications, Judge. The Court had pronounced
7 30 years prison, but then said 15 --

8 THE COURT: It should be 35. I'm sorry.
9 My math escaped me for a minute.

10 ATTORNEY KLOMBERG: And the Court has
11 already ordered the 738 days of credit?

12 THE COURT: So Ordered.

13 ATTORNEY KLOMBERG: It should be on the
14 Judgment. Is the Court Ordering costs?

15 THE COURT: Does it serve any purpose at
16 this point?

17 ATTORNEY KLOMBERG: I always just ask for
18 it.

19 THE COURT: I'm not going to -- I take
20 that back. I'm not ordering a fine, but the
21 taxpayers are entitled to at least Court costs.

22 ATTORNEY KLOMBERG: And the \$38.98 in
23 restitution to Fleet Farm.

24 THE COURT: So Ordered.

25 ATTORNEY KLOMBERG: And the Court has to

1 order DNA.

2 THE COURT: The State Law requires that a
3 DNA sample be provided. With the cost of that
4 there is a DNA surcharge that has to be Ordered.
5 So that will also be ordered.

6 I wish the best of luck to Jared and
7 everybody else in this case. Good luck.

8 Court is in recess.

9 MR. GIESEN: Your Honor, if I may. With
10 respect to DNA, they have already taken it.

11 THE COURT: He only needs to do it once.

12 ATTORNEY KLOMBERG: What would they have
13 taken it for? He hasn't been convicted of a
14 crime before today.

15 THE COURT: Well, at one time they were
16 taking it when they were taken into custody. I
17 don't know. He has to give a sample. If he has
18 already done it, maybe he doesn't need to do it
19 twice. It's my understanding it's not very
20 intrusive. So I don't know how much of a
21 problem that's going to be, but, Mr. Giesen, if
22 you have a problem, you have my permission to
23 contact me and I'll straighten it out.

24 ATTORNEY GIESEN: I would just make the
25 Order conditional and waive costs. He has

1 already given a sample at the Dodge County Jail.

2 THE COURT: I am Ordering he is giving a

3 sample. If he has already done it, I am not

4 Ordering it twice. I am required to Order that

5 he provide a sample.

6 ATTORNEY KLOMBERG: It was just whispered

7 in my ear about the appeal rights. If you did,

8 I'm not sure.

9 THE COURT: I did. I reminded him that

10 he has 20 days to decide if he wants to seek

11 post-conviction relief.

12 Oh, what are the other -- Mr. Spencer,

13 this offense is a felony, upon conviction, which

14 happened awhile ago, you may not vote in any

15 election until your civil rights are restored.

16 Furthermore, it is unlawful for you to possess a

17 firearm. Understood? And body armor, if I

18 remember right.

19 ATTORNEY KLOMBERG: This is a body armor

20 offense.

21 THE COURT: Okay. Court is in recess.

22 (Which were all the proceedings

23 had in the above-entitled cause

24 this date and time.)

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STATE OF WISCONSIN)
) SS:
COUNTY OF DODGE)

I, KIMBERLY KEEL, Official Court Reporter
for Dodge County Circuit Court, Branch III, do
hereby certify that the foregoing transcript is
a verbatim transcription of the proceedings held
in the afore-entitled matter, in said Court, at
the Dodge County Justice Facility, Juneau,
Wisconsin, on July 21, 2017, the Honorable
JOSEPH G. SCIASCIA, Circuit Judge, presiding;
that it is a true and correct transcription of
my stenographic notes taken at said Hearing.

Dated this 14th day of September 2017

Electronically signed by
Kimberly Keel
Official Court Reporter
Dodge County Circuit Court, Branch III